

A
D E F E N C E
A N D
Substance of the Trial
O F
JOHN DONNELLAN, Esq;

WHO WAS CONVICTED FOR THE

M U R D E R

O F

Sir THEODOSIUS BOUGHTON, Bart.

AT THE

A S S I Z E S held at W A R W I C K,

On FRIDAY the 30th of MARCH 1781,

B E F O R E

The Hon. FRANCIS BULLER, Esq;

One of his Majesty's Justices of the Court of KING'S-BENCH.

Founded on the CASE solemnly attested by the Sufferer after his
Conviction, and published at the Request of his Solicitors,

Messrs. I N G E and W E B B.

L O N D O N:

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M. DCC. LXXXI.

[PRICE THREE SHILLINGS AND SIXPENCE.]



DEPOSITIONS

TAKEN AT THE

CORONER'S INQUEST.

WARWICKSHIRE,
to wit.

Information of Witnesses severally taken and acknowledged on the Behalf of our Sovereign Lord the King, touching the Death of Sir THEODOSIUS BOUGHTON, Baronet, at the Dwelling-House of JOHN PARKER, Clerk, in the Parish of *Newbold upon Avon*, in the County of *Warwick*, on the Ninth Day of September, in the Twentieth Year of the Reign of our Sovereign Lord King GEORGE the Third, before me ROBERT FOX, one of his Majesty's Coroners for the said County, on an Inquisition then and there taken on View of the Body of the said Sir THEODOSIUS BOUGHTON then and there lying dead, as follows, to wit.

THOMAS HEWITT, of Rugby, in the county of Warwick, miller, aged twenty-three years and upwards, being sworn and examined, the day and year, and at the place above mentioned, upon his oath, faith, That he knew the deceased for three months preceding the time of his death; that he saw him about a fortnight before his death, at this examinant's mill; that about two months ago he was ordered by the deceased to buy some *Occuli Indicus Berries*; and that he accordingly bought one ounce of a Mr. Bucknill, a surgeon in Rugby. That this examinant also bought a small quantity of spirits of wine, then boiled the berries in water, and mixed the water and spirits of wine together, and put them into a small phial bottle, and delivered them to the deceased, who put them into his pocket; from which time this examinant knows not what is become thereof.

THOMAS HEWITT.

ANNA MARIA BOUGHTON, of Little-Lawford, in the County of Warwick, widow, being sworn and examined the day and year above mentioned, upon her oath, faith, That the deceased was her son; that for a considerable time preceding the time of his death, he took various medicines which were sent to him from a Mr. Powell, a surgeon in Rugby, which sometimes occasioned the deceased to keep his room. That on the thirtieth of August last, this examinant went into his room to give him part of the medicines sent for him from the said Mr. Powell; and that about seven o'clock in the morning of the same day, this examinant, by the direction of the deceased, gave him the medicine contained in one of the phial bottles then standing upon the mantle-piece of the deceased; that she perceived, upon pouring it out into a basin, to give the deceased, a large quantity of powder or sediment at the bottom of the phial; that it had *a very offensive and nauseous smell*; that the deceased complained very much of the nauseousness of the medicine, and that he thought he should not be able to keep it upon his stomach; that there was a label upon the bottle, in which the medicine was contained, expressing the medicine to be the purging potion for Sir Theodosius Boughton.

Boughton. And this examinant saith, that she cannot tell whether there were any other bottles in the deceased's room, containing the same medicine. That John Donnellan, Esq; this examinant's son-in-law; *being informed by her of the situation the deceased was in, came up stairs to this examinant;* and after being informed by this examinant of the medicine she had given him, desired her to give him the bottle; and that he then *put water into the bottle, and poured it and the settling of the bottle out together; put his finger into it, and informed this examinant, it had a nauseous taste.* And this examinant further saith, that the deceased, immediately after taking the medicine, seemed as if he was going into convulsions for a considerable time; but that, after that appearance had subsided, the deceased seemed as if he was going to sleep; upon which this examinant left the room, and returned back in the space of about five minutes, when she found the deceased with his eyes fixed, his teeth set, and the froth running out of his mouth, and expired in a few minutes afterwards. And this examinant further saith, that the composition or mixture contained in the bottle, given by her to the deceased, *was something in colour to that produced and shewn to her by the said Mr. Powell, at this the time of her examination, but to the smell very different, to the best of this examinant's information and belief.*

ANNA BOUGHTON.

THOMAS POWELL, of Rugby, in the county of Warwick, surgeon, being sworn and examined upon his oath, saith, That on Tuesday the twenty-ninth of August last, this deponent sent to the deceased, by his servant, a mixture consisting of fifteen grains of jalap, fifteen grains of rhubarb, twenty drops of spirits of lavender, two drams of simple syrup, two drams of nutmeg water, and one ounce and a half of pump water, with directions wrote upon the phial bottle in which it was contained, to take the same next morning; being a medicine frequently given by the faculty, and which the deceased had before taken without any inconvenience arising therefrom.

THOMAS POWELL.

SARAH STEANE, of Long-Lawford, in the county of Warwick, widow, aged sixty years and upwards, being sworn and examined the day and year, and at the place above mentioned, upon her oath, saith, That she was sent for to the house of the deceased, situate in Lawford aforesaid, to lay him out; and that upon the third day after his death, she assisted in putting the deceased into his coffin, when he was folded up; and that from the time she first saw the deceased, to the time of his being deposited in his coffin, *he seemed and appeared in every respect the same as other corps.*

The Mark of

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SARAH STEANE.

WILLIAM FROST, of Little-Lawford, in the county of Warwick, one of the domestic servants of Lady Boughton, aged twenty years and upwards, being sworn and examined the day and year, and at the place above mentioned, upon his oath, saith, That he saw the deceased the evening preceding his death, and that he appeared to this examinant as usual, and, for what he observed to the contrary, in a good state of health.

WILLIAM FROST.

BRADFORD WILMER, of the city of Coventry, surgeon, being sworn and examined the day and year, and at the place above mentioned, upon his oath, saith, That on Monday the fourth of September he was called upon, in conjunction with Dr. Rattray, to examine the body of the deceased; but that he found it in such a putrid state, that he declared, the opening the body, in his opinion, could not, at that distance of time from *the death of the deceased, determine the cause of death.* This deponent further saith, that on Saturday the ninth of September, he was present at the opening the body of the deceased, that he found all the contents of the abdomen, or lower belly, more or less inflamed and putrid; the upper part of the intestinal canal was more inflamed than the lower part; the texture of the kidneys were destroyed, and the internal substance bloody, and of a red colour; the omentum or caul was tender in its texture and inflamed; the liver smaller than usual, and appeared soft in its texture; the stomach was much altered from its natural state, but not so much inflamed as the parts in its neighbourhood; it contained somewhat less than an ounce of brown coloured thick fluid, which, when taken out and examined in a basin, discovered no grittiness, or any metallic particles;

particles; the diaphragm or midriff, was particularly inflamed; the lungs were putrid and inflamed, and in some parts black, and *on each side of the lungs, in the cavity of the thorax or chest, was about a pint of extravasated blood in a fluid state.* And this deponent further saith, that he hath seen the mixture produced by the said Mr. Powell, the surgeon, and that such a draught or medicine could not, at any time, occasion his death; and that from the reasons before suggested by this examinant, he is induced to believe that at this time it is impossible to tell what occasioned the deceased's death.

BRADFORD WILMER.

DAVID RATTRAY, of the city of Coventry, doctor in physic, being sworn and examined the day and year, and at the place above mentioned, upon his oath, saith, That on Monday, the fourth instant September, he saw the body of the deceased, in conjunction with the last witness Mr. Wilmer, and upon a general inspection of it, this examinant conceived nothing *conclusive could be acquired from the dissection of the body, being so putrified;* and that he this day again saw the body of the deceased, which was opened in this deponent's presence; upon inspection of which, the bowels were found generally inflamed; the stomach a good deal inflamed, but the bowels immediately surrounding, more particularly to the kidneys, black, full of blood, and in a soft state; the lungs inflamed with a quantity of fluid blood, about a pint on each side of the chest under the lungs; the outward surface of the body generally in a mortifying state, the face and genitals particularly so. And this examinant further saith, that the external and internal appearances before described by this examinant, could not have happened, neither would they have appeared upon the deceased from taking the medicine produced by Mr. Powell, and mentioned by him to be the same as that he sent to the deceased. And this examinant further saith, that he hath heard the deposition, or examination, of Lady Boughton read, and that it seemed to him from such account, and the symptoms of the deceased after taking the medicine, that the same was probably the cause of his death.

DAVID RATTRAY.

BERNARD GEARY SNOW, of Southam, in the county of Warwick, surgeon, being sworn and examined the day and year, and at the place above mentioned, upon his oath, saith, That he hath heard the depositions of Bradford Wilmer and David Ratray read, that he was present when the body of the deceased was opened, and that the depositions of the said Bradford Wilmer and David Ratray respecting the state thereof are true.

BERNARD GEARY SNOW.

SAMUEL BUCKNILL, of Rugby, in the county of Warwick, surgeon, being sworn and examined the day and year, and at the place above mentioned, upon his oath, saith, That on the day of this his examination, he opened the body of the deceased, and that the account before given of the external and internal parts thereof by the depositions of the said Bradford Wilmer, David Ratray, and Bernard Geary Snow, are strictly true, the same having been read to this examinant at the time of this his examination. And this deponent further saith, that he believes from the depositions of the said Lady Boughton, now also produced and read to him, that the medicine administered by her to the deceased was the probable cause of his death; and that the medicine or mixture sent by Mr. Powell could not produce the effects or symptoms which attended the deceased, after taking the medicine given him by his mother Lady Boughton.

SAMUEL BUCKNILL.

SAMUEL FROST, of Little-Lawford, in the county of Warwick, late a servant to the deceased, being sworn and examined upon his oath, saith, That on Wednesday the thirtieth of August last, he saw the deceased in his own room, where this examinant received directions from him to go upon business into Leicestershire, and that the deceased seemed at that time in his usual state of health, and in perfect good spirits.

SAMUEL FROST.

MEMORANDUM at the day and place before-mentioned, This inquest was adjourned till tomorrow afternoon at three o'clock, then to meet at the house of the said John Parker, clerk.

ROBERT FOX, Coroner.

DEPOSITIONS

14th September, 1780

DEPOSITIONS of Witnesses severally taken before me, touching the Death of the said Sir THEODOSIUS BOUGHTON, deceased; at the House of the said JOHN PARKER.

ANNA MARIA BOUGHTON, widow, being sworn and examined the day and year, and at the place above mentioned, upon her oath, saith, That upon perceiving the effects the medicines had upon the deceased, desired one of her servants to tell John Donnellan, Esq; her son-in-law, to come up stairs to her in the deceased's room; that soon afterwards Mr. Donnellan came up stairs into the deceased's room to this examinant, and that she thereupon informed him how *the medicine had affected the deceased*, and the situation he was in; upon which the said John Donnellan asked this examinant where the bottle was that contained the medicine, upon which she informed him it was upon the deceased's mantle-piece, and pointed to it, and shewed it the said John Donnellan. That the said John Donnellan thereupon took the bottle off the mantle-piece, swilled the bottle out with water, and threw the water and the medicine which was left at the bottom of the bottle *away together upon the ground*; immediately upon which this examinant expressed her surprise that the said John Donnellan should interfere with the bottle, or throw away such part of the medicine that was left therein, whereupon he informed her that he did it in order to taste it. But this examinant says, that the said John Donnellan did not taste the medicine which was left in the bottle, either before or after he had put the water therein, but that as soon as he had swilled the bottle he threw the *medicine and water upon the ground*; and that the said John Donnellan threw something out of a second bottle which stood upon the deceased's mantle-piece, but what was contained therein this examinant cannot tell; and that after the said John Donnellan had thrown away the contents of the second bottle, he desired the maid servant, Sarah Blundell, who was then in the room, to take the same away before the doctor came, or to that effect; that the said Sarah Blundell thereupon took up two or three bottles in her hand, in order to take the same away; this examinant objected to the bottles being removed, and desired the said Sarah Blundell to leave them in the room, but the said John Donnellan insisting upon the same being taken away, this examinant believes the said Sarah Blundell conformed to such directions. And this examinant further saith, that upon her going to her house at Lawford aforesaid, after the time of her former examination, the said John Donnellan, who heard the same taken, expressed his surprise and disapprobation to her that she should say upon her examination that he had swilled out the bottle, as she never was asked any such question: whereupon this examinant told him that she was upon her oath, and conceived herself obliged to discover all she knew. And this examinant further saith, that she hath heard the said John Donnellan say to the deceased that he had better keep his medicines from the time of their coming from the apothecary's till they were taken, in his first room, and not deposit them in his furthest room, meaning a room of the deceased's, adjoining to and beyond his lodging-room. That the furthest room was locked up, and the key kept by the deceased; but the first room (meaning the deceased's lodging-room) was never locked, and that any part of the family might have recourse thereto; that the deceased frequently kept his medicines in the first room, after the conversation or declarations made by the said John Donnellan. And this examinant further saith, that the circumstance of the said John Donnellan swilling the bottle led her to suppose that some unfair dealings had been carried on respecting her son, and that he had died by the medicine she had given him; and that she herself was so much alarmed at it, that she declared she should like to be opened when she died.

ANNA BOUGHTON.

SARAH BLUNDELL, of Little-Lawford in the county of Warwick, spinster, aged twenty-nine years and upwards, being sworn and examined the day and year, and at the place above mentioned, upon her oath, saith, That she was in the room of the deceased at the time he died, and that Mr. Donnellan immediately after the death of the deceased, came into the deceased's room, and ordered this examinant to take away the bottles, and to dust and clean the room; that she accordingly complied with his directions, and that Mr. Donnellan assisted her in taking away the bottles and cleaning the room.

SARAH BLUNDELL.

C A S E

T H E
A D D R E S S
O F

Messrs. *I N G E* and *W E B B*.

WE are conscious, that in complying with the request of the late unfortunate Capt. Donnellan, by submitting his case to the public, we shall incur the displeasure of many, and expose ourselves to much ill-natured criticism: but a solemn promise to that unhappy man made it a duty indispensable; and had a prudential motive been wanting to justify our conduct, misrepresentation, public and private, took care to furnish one.

Since the trial, it has been universally believed, with how much justice is not for us to decide, that the defence made for the unfortunate sufferer on the trial, was a very imperfect one; and that his conviction was chiefly imputable to the neglect of his lawyers.—Every man in the profession must tremble at censures like these; and as in the present case they must apply either to the council or ourselves, that alone might have been thought a sufficient motive for giving the world better grounds, than those of conjecture, to decide upon, by the publication of the following sheets: for the great professional character of Mr. Newnham, and the learned gentlemen with him, was in that case to be weighed against ours; and no one would be so partial to either of us, as not to pronounce at once, that the solicitors, not the council, were in fault.

This publication contains the case, being part of the brief, which was compiled, with unremitting assiduity, from all the information which could be gained, during the time of Mr. Donnellan's imprisonment; and we were fortunate enough to anticipate most of the crown evidence, to which we inserted in the brief such answers or refutations, as appeared to us substantial; at any rate, they were the best we could offer, and nearly the whole could have been supported by proofs, a series of which were annexed to the case. These we have not now published in a regular course, because, as they are taken notice of in the comments annexed, an insertion of them, as they were then arranged, would only have been fatiguing the reader by voluminous repetition.

It has been said, that our behaviour in court must have been very inattentive; for that had proper suggestions been made to the council in the course of the evidence, such apparent neglect could not have taken place: in answer to which, all that we have to say is, that we are not conscious of the least inattention in that respect, nor
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did we fail to communicate our ideas; but it was for the council to judge whether they were pertinent or not. Also, with respect to the defence, read by the clerk of the arraigns, which has been so much complained of, we have the satisfaction to say, that the same was approved and settled by council, and adjudged by them to contain as much as was necessary.

The defence included in this publication, was composed by a gentleman, who had no personal motives to influence him, but was prompted by his spontaneous feelings, on reading this case, to vindicate the character of Capt. Donnellan. At the same time he wished to expose the defect of circumstantial evidence in general, and to satisfy the public in a way the most conclusive, that a substantial defence might have been formed with the materials given to our council. The latter motive is so peculiarly obliging to us, that we could do no less in return, than assist him with every possible information on the subject; and as he has in some cases rested his fact on our authority, we solemnly declare to the public, that in every reference of that kind, he states literally the truth, as far as our knowledge extends.

Nothing now remains but to solicit that the case may be candidly considered; and we trust, that the matter, not the language, will be attended to; for every one knows that elegance of style would be useless in a brief, and that the technical language of attorneys is grating to a classical ear. Fidelity to the trust reposed in us, precluded a single alteration after it was received from the hands of the unfortunate sufferer; therefore we submit the whole to the public as it then stood.

We shall now conclude with professing, that in sending these papers to the press, we are influenced by no resentment from the aspersions thrown upon us, nor any desire of making ourselves conspicuous; but by duty to the unhappy sufferer and his family, and a desire to vindicate our own professional characters.

COVENTRY, April 28, 1781.

EDW^d. INGE, Junr.

THO^s. WEBB.

DEPOSITIONS

C A S E
O F
JOHN DONNELLAN.

The following was written by JOHN DONNELLAN, Esq. on the last Sheet of his Case, deposited in my hands, one of his Solicitors, the day before his Execution.

THO. WEBB.

SUNDAY, APRIL 1, 1781.

*" This Case has been read over to me this day, being the last day of my life : and
" it contains nothing but real facts, as far as my knowledge goes, and I solemnly
" request, and firmly desire, that it may be published as a firm Vindication of my Ho-
" nour and Character to the World. I also desire that Mr. WEBB, one of my solici-
" tors, may be the whole and sole publisher of it, as a clear testimony of my being
" perfectly satisfied with his Conduct.*

" JOHN DONNELLAN."

Witness WILLIAM ROWE, Junior.

Witness RICHARD REYNOLDS.

C A S E,
PRINTED from the BRIEF.

JOHN DONNELLAN, Esq. is son of Colonel Donnellan. He was placed at the Royal Academy, Woolwich, when he was very young, where he received the early part of his education. At the age of twelve years he entered into the Royal Regiment of Artillery; with part of which regiment he went to the East Indies about the year 1754. Soon after his arrival there, he changed his service into the 39th regiment of foot; but on that regiment being ordered to Europe, he, with many other officers of the same regiment, had his Majesty's leave to remain in the service of the East India Company, and while he continued therein, a company was given to him. On his return to England, he was put upon half pay in the 39th regiment of foot, on producing a certificate of his good behaviour to the then Secretary of War, Lord Barrington, and is now in receipt of the same.

In June, 1777, he intermarried with Miss Boughton, sister of the late Sir Theodosius Edward Afley Boughton, who were the two only surviving children of Sir Edward Boughton, late of Lawford-Hall, in the county of Warwick, Baronet. Sir Edward left them to the care and guardianship of their mother, the present Lady Boughton, who, on her husband's death, requested Sir William Wheeler, and Sir Francis Skipwith, Baronets, to act in conjunction with her in their management; both of whom acted during the life of Sir Francis Skipwith, but on his death the whole devolved upon Lady Boughton and Sir William Wheeler. Sir William seldom interferred, except when particularly required by Lady Boughton; therefore her Ladyship may be said to have had the chief care and management of her children, and their property.

On the death of Sir Edward Boughton, his widow, Lady Boughton continued to live at Lawford-Hall; and soon after her husband's death she sent Sir Theodosius to Eaton school. During the time he was there, he led a life of dissipation and folly: a matter which his mother may, in some degree, be said to have been the cause of; for whether from a wish in her Ladyship to check his imprudences, or from the known covetousness of her disposition, or from what other motive is not known, but during the first part of the time he was there, she allowed him only eighteen-pence per week for pocket money, and afterwards no more than half a crown; so that Sir Theodosius finding the same far unequal to the expences he was necessarily put to, was obliged to think of some other means of procuring money, and being young and unexperienced, had recourse to Jews, as Mr. Donnellan was informed by him. By this mode of supply it is however natural to suppose that he was furnished with plenty of money, and if that can be believed, it is equally reasonable to suppose that the same tempted him to enter into debaucheries and follies which he might not perhaps have thought of, had his mother made him an allowance suitable to his birth and fortune. Therefore, to her conduct may, in some degree, be attributed the beginning of her son's intemperances.

In July, 1777, being the month after Mr. Donnellan's marriage, he and his wife went to Eaton to see Sir Theodosius; whom they found at a Mrs. Roberts's there, in a *deep salivation* for the venereal disease, under the care of a Mr. Pearson, surgeon, of that place.

Soon after this Mr. and Mrs. Donnellan went to Bath: During the time they continued there they received several letters from Lady Boughton, in the first of which she tells them that she had "*fetched*"* her son from Eaton, and had placed him under the care of a Mr. Clare, an apothecary at Rugby (a plain proof that he was not then well); and in all the rest she complains of her son's irregularities, and says in one or two of them, "*that blotches appeared upon his face, that he had lost his fine complexion, and that he was then taking things for his complaint.*"†

Note,—*These letters are ready to be produced, in case a production of them should be found necessary.*

Before Mr. and Mrs. Donnellan left Bath, Lady Boughton made them a visit there, and took Sir Theodosius with her, who during the time he was there, was engaged in several disputes and quarrels, one or two of which were near being carried to serious lengths, had not Mr. Donnellan stepped in and prevented them, as is well known to Lady Boughton‡. On her Ladyship's return from Bath, she wrote Mr. and Mrs. Donnellan, several very pressing invitations to Lawford-hall, which Mr. Donnellan at first declined, but afterwards accepted; and they arrived there in June 1778. On their arrival, they found Lady Boughton had sent Sir Theodosius to be under the private tuition of a Mr. Jones, near Northampton, where he continued upwards of five months after Mr. Donnellan's arrival at Lawford.

On Sir Theodosius's return from Mr. Jones's, he was so much altered in his countenance and person, that Mr. Donnellan suspected he had contracted a fresh venereal complaint; and, therefore, merely with a view of recommending a skilful surgeon to him in case he had, took an opportunity of questioning

* Her own word.

† Lady Boughton on the trial acknowledged writing to this effect.

‡ Lady Boughton, on the trial, confessed this to be true.

tioning him privately on the subject. At first he seemed unwilling to give any answer, but at length confessed, that when he went to Mr. Jones's, he was not well of his old complaint, and that while he was there, he used a great deal of mercurial ointment, and wore flannel drawers every night in order to prevent a discovery upon the sheets. Mr. Donnellan immediately communicated this to Lady Boughton, and advised her to place Sir Theodosius under the care of some surgeon of eminence, who instead of attending to what he said, gave her son a book called the Family Physician, which he paid great attention to, and it is well known, was continually quacking himself from it.

Sir Theodosius continued these practices till the same, added to his intemperances, and his unfortunate connections with different women, had nearly destroyed his constitution, and reduced him to a mere skeleton. In June last, he contracted a fresh infection, and applied to Mr. Powell, apothecary, of Rugby, who gave him several boluses of calomel *, and before the end of the next month effected, as he thought, a cure; but about a week or nine days before the death of Sir Theodosius, he applied to him again, and complained of a swelling in his groin; which Mr. Powell examined, and found to be a buboe forming. Mr. Powell told Mr. Webb that he also observed a blackness about the same, and asked Sir Theodosius what was the meaning thereof? who replied, that it was owing to his having put some mercurial ointment upon it, and that upon his (Mr. Powell's) expressing some surprize at Sir Theodosius's having any knowledge of mercurial ointment, Sir Theodosius told him, he had frequently used it before: This is mentioned in order to prove, that Sir Theodosius not only knew the effects of mercurial ointment, but that he absolutely used it frequently.—Mr. Powell on this gave Sir Theodosius a *repellant composed of strong Goulard*, (according to his own declaration to Mr. Webb since) which Sir Theodosius used to the time of his death, and had a machine in nature of a bandage for that purpose, which was found in his bed-room after his death.—Whether this buboe proceeded from the fresh infection or from the old complaint is perhaps uncertain, but the same is sufficient to shew that the *venereal virus* was then in his blood.

On the Saturday preceding the death of Sir Theodosius, the Reverend Mr. Newsam of Great Harborough, called at Lawford-hall, and took notice to Mr. Donnellan that Sir Theodosius appeared much worse than usual; Mr. Donnellan, by way of reply, said he did not wonder at it, for that he was continually quacking himself with mercury, and by that means had nearly, he believed, ruined his constitution.—Mr. Newsam concurred with him in opinion, and as a proof that he thought Sir Theodosius much altered and in a bad way, he mentioned the same to a Mr. Clay, of Rugby, soon afterwards †.

That Mr. Donnellan had reason to think Sir Theodosius's health in a dangerous state, is obvious—he knew the quantities of mercury he took and applied outwardly—he also knew his intemperances, and was confirmed in these things, by the frequent appearances of a slight salivation in Sir Theodosius, which were so apparent by his breath smelling offensively, and a quantity of water always running from his mouth, that nobody chose to drink after him—and Lady Boughton must also well recollect, that Sir Theodosius was obliged to keep an handkerchief continually at his mouth.

But Lady Boughton has paid the bills of three different surgeons for attending Sir Theodosius, which she has had notice to produce on the trial, under the title of “all the bills she has paid to the different surgeons and apothecaries at any time employed by Sir Theodosius;” and it will appear from them what quantity of mercury he has taken and used. She has also had notice to produce “a written paper, “in the hand-writing of Sir Theodosius, found in his bed-room after his death, containing a memorandum of the time and place, when and where he contracted the last infection, and of the effects
“ of

* A matter Mr. Powell acknowledged to Mr. Webb was true, and that there were about eight grains of Calomel in each bolus.

† Notwithstanding the different account given by Mr. Newsam on the trial, of this conversation, Mr. Donnellan after his conviction, declared that the above, though not perhaps the exact words, was in purport the whole that passed between them.

“ of the medicines which had been sent him by Mr. Powell, for curing the same.” It seems very extraordinary that Sir Theodosius should have made such a memorandum, but it is nevertheless true that he did do it, and the same is now in Lady Boughton’s custody. *

On the Sunday preceding Sir Theodosius’s death he seemed himself sensible of the weak state to which he was reduced, and wept bitterly to his mother, saying, that if he should get the better of his then complaints he would lead quite a new life.

On the Tuesday following, being the 29th of August last, Mr. Powell sent Sir Theodosius a medicine, to be taken the next morning. The person he sent it by, was Lady Boughton’s servant boy, Samuel Frost. He delivered it to Sir Theodosius about four o’clock that afternoon, who immediately put the same into his pocket, as Samuel Frost has since said; and he, Samuel Frost, did not, as he has also since frequently said, see or know what Sir Theodosius afterwards did with it.

At the time this medicine was delivered to Sir Theodosius, Mr. Donnellan was walking with his child in the field adjoining to the house, and could not possibly see or know any thing of Samuel Frost’s delivering the same to him. He continued to walk in the above field until about five o’clock; when coming towards the house, he did not go in, but went into the front garden, where he had not been many minutes before he observed Lady Boughton enter the same from the house, with a basket in her hand. Her Ladyship seeing him, called to him, and asked him to go and assist her in gathering some fruit. He accordingly went; and while they were gathering the same, they saw Sir Theodosius ride by the wall of the garden, whom they asked where he was going? and he answered a-fishing. Some of the fruit being out of Mr. Donnellan’s reach her Ladyship desired him to go and call Samuel Frost, the servant boy [before mentioned], to bring a ladder. Mr. Donnellan accordingly went into the house, and called “ Sam ” several times. On his not answering, he went to the kitchen, where he found three maids busy in a wash, viz. Sarah Blundell, Susannah Sparrow, and Catherine Amos; the first was the house-maid, the second Mrs. Donnellan’s maid, and the last the cook. He enquired of them where Samuel was; and on their saying they did not know, he desired them to send him into the garden with a ladder, as soon as they should see him, and then returned straight to Lady Boughton, *the whole time of his absence from her, not being more than three minutes* †.

Soon after Mr. Donnellan had returned, Samuel Frost appeared in the garden with a ladder, and while they were gathering the fruit therewith, Sarah Blundell entered the garden, and told Lady Boughton that a Mr. Dand, and one Matthews, a carpenter, wanted her: upon which her ladyship went towards the house, and Mr. Donnellan with her, it being then about six o’clock. When they arrived in the hall, they found Dand and Matthews there, whom they talked to about ten minutes (during which time Mr. Donnellan never left them), and then they (Dand and Matthews) went away out at the door which leads into the inner court-yard, and Mr. Donnellan, at the same moment returned again into the garden. There are large iron gates which open from the garden into the dial court-yard, and just as Mr. Donnellan had reached those gates, he observed Dand and Matthews (whom he had that moment parted with) pass along the yard towards the stable; and therefore, as he had something more to say to them, he opened the iron gates, and called them to him.

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* Mr. Newnham, on the trial, did not think it prudent, or necessary to ask for the bills of the different Surgeons, or for the paper found in Sir Theodosius’s bed-room, or to cross-examine Mr. Powell at all; therefore the court remained ignorant of Sir Theodosius’s having ever had any other venereal complaint than the last infection, or of his ever having taken or used mercury at all.

† Lady Boughton, on the trial, swore that it was about seven o’clock of the evening preceding Sir Theodosius’s death, when Mr. Donnellan told her the strange story of his having been a fishing with Sir Theodosius. At the time Sir Theodosius rode by the wall of the garden, when he went a fishing, Mr. Donnellan was with her Ladyship, and did not quit her presence, except in going to call Samuel Frost till Dand and Matthews arrived; and afterwards he did not see her Ladyship till near ten o’clock, so that she could not be correct in what she said on that head; but indeed the whole story seems improbable, for it would have been absurd to the last degree in Mr. Donnellan to have said that he had been a fishing with Sir Theodosius, when he knew the gardener and others could so flatly contradict it.

This conversation with them continued some time, and then, Mr. Dand leaving them, Mr. Donnellan and Matthews walked to Hewitt's Mill, at a small distance from Lawford-hall, to look at the alterations then making there. After which they walked up the river-side to view the state of the flood-gates, and continued to walk there some time. At length Mr. Donnellan observing, that the dew fell heavy, and Matthews looking at his watch, and saying, that it was past nine o'clock, they parted; Matthews going to Longlawford, and Mr. Donnellan returning to Lawford-hall, the same way that he went from it, viz. through the iron gates before-mentioned, into the garden, and from thence through the hall and passage into the parlour, where he found only Lady Boughton, and whom he saw at the parlour-window as he passed through the garden, the windows thereof looking into the same: her ladyship also saw him, and must well recollect, that he was with her in the parlour in less time than one minute after she saw him pass by the window.

On Mr. Donnellan's entering the parlour, Lady Boughton asked him, if he had seen Sir Theodosius, or knew where he was? who replied, that he had not seen or heard any thing of him; upon which she said, *that he was out a fishing*, and added, that she was very angry at him for staying out so late, for that she must, owing to the same, be obliged to light candles, and expressed no other concern.

Just at this moment Mrs. Donnellan entered the parlour, and observing that Mr. Donnellan's feet were wet, advised him to change his shoes and stockings, who refused, saying, he was tired, and would go to bed. Accordingly Mr. Donnellan drank a basin of milk, then on the table ready for him (the same being his usual supper), and immediately went to bed: in five minutes after which Mrs. Donnellan followed him, Sir Theodosius not being then returned.

The room Mr. and Mrs. Donnellan slept in, was directly over the parlour before mentioned, and the stair-case leading to it, adjoins the said parlour door, so that he was up in his room in less than a minute, and must have been heard there by Lady Boughton in less than that time. From whence he did not stir till morning.

The stair-case before mentioned, leads to Mr. and Mrs. Donnellan's room, and another room or two (which were made no use of) and to those rooms only; and the same rooms have no kind of communication with any other part of the house. Sir Theodosius's room was quite on the other side of the house; therefore if Mr. Donnellan had visited his room before he went to bed, he must have first returned down the before-mentioned stair-case, (which he could not have done, without being observed by Lady Boughton, the parlour door being open the whole of that evening) and then have gone through the house upwards of 80 yards, and up another distant stair-case; a matter impracticable, without being seen by some of the servants. But, even supposing Mr. Donnellan could have had access to Sir Theodosius's room, unobserved, as it was then dark, it would have been nearly impossible for him to have distinguished any particular bottle from the various number then in his room.

Thus, the impossibility of Mr. Donnellan's having access to Sir Theodosius's room, from the time of the medicine being delivered to him by Samuel Frost, to the time of his death, is obvious, unless we could imagine that he went into the room the morning of his death, and mixed poison in the medicine while Sir Theodosius was in bed; the idea of which is too absurd to be mentioned. The fact is, that Mr. Donnellan knew nothing at all of Sir Theodosius's having received any medicine from Mr. Powell the day preceding his death: But even if he had, and had had an opportunity of going to Sir Theodosius's room unobserved, it is not certain that he would have found the medicine there. For Sir Theodosius put the same into his pocket immediately on receiving it, and as it is supposed there will be no proof of his having deposited the medicine in his bed-room, it is not impossible but that he might take it with him in his pocket when he went a fishing*.

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* Dand and Matthew were subpoenaed to have proved the several matters related of them; but Mr. Newnham thought it would be impossible to account for Mr. Donnellan's time the afternoon preceding Sir Theodosius's death, and therefore would not call either of them.

The next morning, being the 30th of August, Mr. Donnellan rose about six o'clock, having agreed the preceding evening, to take a ride with Lady Boughton, who wanted to go to a person's house, at a few miles distance from Lawford-hall, to make some enquiries respecting a servant girl, and he walked about the garden and yard a considerable time, expecting her Ladyship. At length, growing impatient, he went under her chamber window and called her several times; she at last answered him, not from her own window, but from a window at the stair head, between Sir Theodosius's room and her Ladyship's, and told him she should not be ready some time. Mr. Donnellan observing that she had not her riding-dress on, thought he might take a ride to Newnham Wells, distant about three quarters of a mile from Lawford-hall, to drink the waters there, (which he usually did) and return before her Ladyship should be ready; and therefore, observing William Frost, the coachman, standing in the yard with the horses, he went to him, and taking the little bay mare out of his hand, bade him put Lady Boughton's horse into the stable, for that her Ladyship had said, she should not be ready some time, and desired him to tell her, in case she should be ready before his return, that he was gone to Newnham Wells, and would not be long. This was the whole that passed between them; but 'tis said, William Frost is to swear on the trial, that Mr. Donnellan desired him to pull out his watch, and remember the exact time of his, Mr. Donnellan's passing thro' the gate then near them, being the great or outward court-gate; which is a matter so absurd in itself, that every person must imagine Mr. Donnellan an idiot to give credit to it †.

Mr. Donnellan returned from Newnham Wells in less than three quarters of an hour, and just as he had reached the outward court gate above-mentioned, he was met by William Frost, who told him that Lady Boughton wanted him immediately: William appearing to be out of breath, and somewhat agitated, Mr. Donnellan asked him what was the matter? who replied, that Sir Theodosius was taken ill, and that he was going for Mr. Powell, and said that Lady Boughton desired him to take that mare which Mr. Donnellan was then upon, as she would go fastest:—Whereupon Mr. Donnellan immediately dismounted, gave him the mare, and *bade him fly*, and then went as fast as he could towards the house. He was met by Lady Boughton, who hastily told him, that soon after she spoke to him out at the window, she gave Sir Theodosius his physic ‡, and that it had made him "*mighty bad*." || Mr. Donnellan not knowing the circumstance of Mr. Powell having sent Sir Theodosius any physic the preceding evening, asked her what physic she meant! who replied, some physic Mr. Powell had sent him the afternoon before:—Upon this Mr. Donnellan immediately went up stairs into Sir Theodosius's room, and Lady Boughton followed him. On his entering the room he found Sir Theodosius in the agonies of death, his eyes being fixt, his teeth set, and foaming at his mouth. He looked upon the sad spectacle with horror and amazement for some little time, and then Sir Theodosius went off; immediately upon which he turned round to Lady Boughton, and in a tone of voice which evidently marked his being affected at this melancholy event, asked her what she had been giving her son, and where the bottle was which contained the physic? who thereupon pointed to a small phial bottle then on the chimney-piece, and said that was it; and then she began to tell Mr. Donnellan the whole of what had happened, and said that when she poured out the medicine she left some of the sediment at the bottom, which Sir Theodosius observing, desired her to put some of the medicine back again into the bottle and shake it well, that he might have the whole, which she said she did, and said when she had got it all clean out, she gave it him to drink, and afterwards gave him some cheese, by his direction, to keep the same upon his stomach: Mr. Donnellan then took the bottle from the chimney piece, and not being able to discover at first sight, that there were any dregs or relicks in it, held the same up between himself and the window, in order to see more fully, whether there were any dregs or not, and which he then found to be quite clean and dry, both within and without: But
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† This matter, it seems, was only report, for it was not attempted to be proved on the trial. However it was an unfortunate report for Mr. Donnellan, for the same was very generally believed, and tended to prejudice the country much against him.

‡ Lady Boughton swore positively, on the trial, That she had given Sir Theodosius his physic before she spoke to Mr. Donnellan out at the window, and yet said, that he was dead within twenty minutes afterwards; a matter in which she could not be correct, for Sir Theodosius did not die till after Mr. Donnellan's return from Newnham-wells, and he was absent near three quarters of an hour. Before the Coroner Lady Boughton swore, "That immediately after Sir Theodosius had taken the medicine, she left the room; that she returned in about five minutes, and that in a few minutes afterwards he expired."

|| Her own words.

thinking it perhaps probable, that by putting a little water into the bottle, he might be able to get something off the sides, and by that means discover by tasting it, what the medicine was, which Sir Theodosius had taken, he put about a tea spoonful of water into the said phial bottle, and after rinsing it well, poured the same out into a small white basin then on the table, and dipping his finger in it, tasted the same several times, after which he told Lady Boughton, that he could not get sufficient off the sides to taste exactly what the medicine was, but that what little he could taste of it, was, he thought, rather nauseous*.

He also afterwards tasted two or three more medicines then in bottles on the chimney-piece, where were many phials, gallipots, &c. some of which smelt very offensively, and there being a close-stool in the room, which also smelt offensively, and observing Lady Boughton begin to clean the room, and put the things together belonging to Sir Theodosius into the adjoining room, which she had then secured the key of, he thought it was intended that there should be a general clearing of the room, and therefore desired Sarah Blundell (a servant woman then in the room, and who is since dead) to help her Ladyship, and bade her in particular to take away the close-stool. Mr. Donnellan happening at the time she was taking away the things, to stand near the chimney-piece, where the chief part of the bottles stood, and seeing Sarah Blundell coming up to take them away, put some of them into her apron, which was all the assistance he gave, and which was nothing more than any one else might have very innocently done. But Sarah Blundell having stated (as is said) in her deposition, that Mr. Donnellan assisted her in cleaning the room, without saying in what manner that assistance was given, the said circumstance has been construed very much to Mr. Donnellan's prejudice, and is considered as a strong part of his adversary's case against him.

As to the matter of rinsing the bottle, the circumstance of Mr. Donnellan's putting no more water therein than a tea spoonful plainly shews that his sole motive in doing it, was only to discover, if he possibly could, what it was that Sir Theodosius had taken; for if he had wished thereby to have cleaned the bottle, a larger quantity of water would most certainly have effected it better than so small a quantity as a tea spoonful. The fact was, that he knew a large quantity would drown what little of the medicine might remain on the sides of the phial, if any, and that therefore the smaller the quantity he put in, the more likely it would be to taste what the medicine was. But the circumstance of the bottle being quite dry and clean, according to Lady Boughton's own confession, by her putting some of the medicine back again, and swilling it all clean out before he took the same into his hand, certainly puts his innocence, in the matter of rinsing the bottle, beyond a doubt; for if the bottle was then clean and dry, there could be no occasion for washing it. And besides, if he had been disposed to have done a thing of that kind, it is natural to imagine that he would have done it more secretly, and not before Lady Boughton, and Sarah Blundell.

Also in regard to the other matter of desiring Sarah Blundell to take the close-stool, and other things away, if he had had any design by that means of having the bottle, the physic had been contained in, taken away, he would have thought of some method for having the same bottle totally destroyed, by desiring her to throw all the bottles away, or else he would have watched where she took them to, in order to have known where to have found them to have destroyed the same himself: but, instead of that, he left it to her to take them where she pleased; and he afterwards learnt that she put them into a hole in the kitchen, sometimes used for stewing, where recourse might have been had to the same at any time, had the said bottle ever been asked for: but the same was not asked for, or any thing about it, till the 9th or 10th day after Sir Theodosius's death, and then Mr. Caldecott the Solicitor, employed in the prosecution against Mr. Donnellan, enquired for it, and said he thought it would be right to obtain the said phial, which Mr. Donnellan no sooner heard of, than he immediately enquired of Sarah Blundell, where she had put the bottles she took away, who shewed the same to him, upon which he

* Lady Boughton, in her first examination before the Coroner, swore that Mr. Donnellan poured out the contents of the bottle after rinsing it, and informed her it had a disagreeable taste. In her second examination before the Coroner, she swore he did not taste it at all, but threw the same upon the floor, and in court she swore that he threw it into a basin of dirty water.

he searched for the phial before mentioned, and found one which he thought might be it; but, in order to satisfy himself, shewed the same to Samuel Frost, who said he thought that was the bottle he had given to Sir Theodosius the evening before his death; Mr. Donnellan, therefore, took this bottle into the parlour, and put it upon the harpsichord ready to be produced when required.

In about an hour after Sir Theodosius died, Lady Boughton sent for different people from Rugby, to give them directions about his funeral; and before ten o'clock that morning, being Wednesday the 30th of August last, they all of them attended and received their instructions from Lady Boughton while she was at breakfast.

She also, some time the same morning, unlocked the great parlour door, and calling Mr. Donnellan into the same, said, that as Sir Theodosius was then dead, he (Mr. Donnellan) might consent to let her (Lady Boughton) have a particular farm, rented by one Thomas Parsons, which Mr. Donnellan's wife came into possession of on Sir Theodosius's death, adding at the same time, that his wife would consent to any thing he might agree to. She also told him, that he might consent to let her relation, Mr. Rye, a young clergyman, have the reversion of the living of Newbold, if he pleased: and further said, that if he would consent to those things, she would have his life put into his Marriage Settlement. She also said, she had proposed these things long before Sir Theodosius's death, and that she had absolutely spoke to a Mr. Smith, an attorney of Northampton, about altering the settlement, and that he had drawn a draft of a deed for the purpose; and also that she had mentioned it to Sir William Wheeler. Mr. Donnellan was astonished at this conduct, and making no other reply, than that of telling her Ladyship, he was no more than guardian to his children, and therefore never would do any thing to their prejudice, left her.

Prior to this conversation with Lady Boughton, Mr. Donnellan had wrote a letter to Sir William Wheeler, informing him of the death of Sir Theodosius, and on the Saturday following, being the 2d of September, and the third day of Sir Theodosius's death, Mr. Donnellan received an answer from Sir William Wheeler, condoling with him and the rest of the family for the loss.

On the fourth day of Sir Theodosius's death, being Sunday the 3d day of September, the body of Sir Theodosius beginning then to taint, and become offensive, owing to the extreme heat of the weather at that time, it was thought adviseable by Lady Boughton to have it put into a coffin, and accordingly the same was, on that day, put into a leaden coffin, and foldered up, and it was intended that the said body should have been buried on the next day, no one having at that time the least suspicion that Sir Theodosius had been poisoned: but on the said next day, being Monday the 4th of September, and the fifth day of Sir Theodosius's death, Sir William Wheeler wrote another letter to Mr. Donnellan, informing him, that various reports had been spread round the country respecting Sir Theodosius's sudden death, and that therefore he wished for general satisfaction to have the body opened.

The said letter was brought to Mr. Donnellan by Mr. Powell, the gentleman before mentioned to have been employed by Sir Theodosius as his surgeon, and Mr. Donnellan had no sooner read it, than he immediately dispatched a messenger with a letter to Coventry to Mr. Wilmer, surgeon, and Dr. Rattray, physician, of that place, two of the gentlemen mentioned in Sir William's letter, whom he wished to have attend, expressly enjoining them to be at Lawford-hall that evening, if possible, to open Sir Theodosius's body.

When Mr. Donnellan opened this letter, and saw the nature of its contents; he was a good deal affected, as was natural, when charged with so horrid a crime; and his hands shaking very often from a nervous complaint he has long been troubled with, they shook particularly on this occasion, which was observed by Mr. Powell, and it is reported that the same is to be brought against Mr. Donnellan as a proof of his guilt.

As soon as Mr. Donellan had sent for Mr. Wilmer and Dr. Rattray, he wrote an answer to Sir William Wheeler, by Mr. Powell, informing him of the ready acquiescence of the family to his proposition, and that he had accordingly sent for Mr. Wilmer and Dr. Rattray, with an express desire to have them attend that evening, and requested Sir William likewise to attend. He also desired Mr. Powell to tell Sir William to bring Mr. Snow, Sir William's family surgeon and apothecary, and living near Sir William's house, with him; and on Mr. Powell's return, he brought another letter from Sir William, expressing his highest approbation of the willingness the family shewed to have the body of Sir Theodosius opened, but begged to be excused attending himself; hinting, that he thought it improper for any one except the faculty to attend on such an occasion. About nine o'clock the gentlemen of the faculty arrived, and on Mr. Donellan's giving them Sir William's letters, and telling them that it was wished by Sir William and the family, that the body of Sir Theodosius should be opened to discover, if possible, the cause of his death; the said gentlemen, consisting of Mr. Wilmer, Dr. Rattray, an assistant to Mr. Wilmer, and Mr. Powell, as soon as the coffin was unfolded went into Sir Theodosius's room by themselves, and after continuing there sometime returned, and informed Mr. Donellan, and the rest of the family, that the body was in so putrid a state, it was not only dangerous to approach it, but impossible then to form any judgment with respect to the same, and therefore recommended it to them to have the coffin folded up again, and the body interred as soon as possible. Mr. Donellan then expressed a wish that Sir William Wheeler should know the result of their attendance; and in order that he might have the greater satisfaction, requested Dr. Rattray to wait upon him the next day, who replied, that he should see Sir William, he believed, the next day, and would then inform him what had been done.

The said gentlemen of the faculty then sat down with the family to supper; and after supper, all of them expressing a wish to return home, Mr. Donellan requested them to stay all night, but on their declining it, he called Lady Boughton to the door, and hinted to her Ladyship that they should be paid, who said she had not, for her part, at that time, money enough in her pocket to do it, whereupon Mr. Donellan said he would then pay them himself, if she pleased, who desired he would, and accordingly he gave them six guineas a-piece, and Mr. Wilmer's assistant two guineas, and which fees he thought no more than proper, considering Sir Theodosius's birth and fortune, and that they had put themselves to the expence of hiring chaises, owing to the lateness of the hour they attended; and Dr. Rattray has since declared, that his fee was no more than a country apothecary would have expected.

Immediately after being paid, the above-mentioned gentlemen returned home, and the next morning, being Tuesday the 5th of September, and 7th day of Sir Theodosius's death, Mr. Donellan wrote a letter to Sir William Wheeler, the purport whereof was to inform him, that the gentlemen of the faculty had attended according to his wish, and that they satisfied them at Lawford, and that he hoped he, Sir William, would hear from them the result of their attendance.

Soon after Mr. Donellan had sent the above mentioned letter, a Mr. Bucknill, surgeon, of Rugby, called upon him at Lawford, and said he had understood that he Mr. Donellan wished to have the body of Sir Theodosius opened. Mr. Donellan replied, that it was his wish to have it done, and that Mr. Wilmer, Dr. Rattery, and Mr. Powel, had attended the preceding evening for that purpose, but found it in so putrid a state that they thought it not only unsafe to attempt it, but impossible, at that time, to form any opinion with respect to the cause of Sir Theodosius's death; Mr. Bucknill laughed at this, and said, that they were country practitioners, but that the matter of opening the body would be a posy to him. Mr. Donellan thinking this a comical expression, turned round and could not help smiling, which Mr. Bucknill observing, was very much offended at, as Mr. Donellan has since been informed, and which may, in some measure, account for the active part he has taken to the prejudice of Mr. Donellan in this business.

But before they parted Mr. Donellan nevertheless told Mr. Bucknill, that tho' Dr. Rattray had declined opening the body; and also, notwithstanding the carpenter and plumber had just then finished folding and fastening up the coffins, yet it was still his wish to have the body opened, and if he, Mr. Bucknill,

would take the trouble to wait upon Sir William Wheler, and obtain his consent of its being done, he would again have the coffins unfastened, and think himself obliged to him to undertake the matter, but said, that as he Mr. Donellan had then hitherto acted strictly conformable to his, Sir William's, directions, he did not, at that period of time, like to do any thing without them.

Mr. Bucknill then left him, and the next morning, being Wednesday the 6th of September, and the eighth day of Sir Theodosius's death, as before mentioned, Mr. Donellan received a letter from Sir William Wheler, in answer to that Mr. Donellan sent him the morning before. In which letter Sir William says, that according to his (Mr. Donellan's letter) of the preceding morning, he expected to have seen or heard from the gentlemen, who attended on Monday evening to open Sir Theodosius, but had been disappointed, and adds, that as he had been informed, a Mr. Bucknill, of Rugby, had said he would undertake to open the body, he would desire Mr. Snow to call upon him, and take him with him to Lawford, and recommends it to Mr. Donellan to let them open the body in case they should attend for that purpose.

Immediately on receipt of this letter Mr. Donellan cheerfully determined within himself to have the body opened, in case Mr. Bucknill and Mr. Snow should attend, and waited in expectation of seeing them, but was at a loss to account for the reason that Dr. Rattray had not then been with, or sent to Sir William Wheler; and, in order to have the same explained, sent a note that morning to Mr. Wilmer, who wrote for answer, that Dr. Rattray was out of town, but that he expected him home that night, and as soon as he should come, they would go to Sir William.

Mr. Donellan, as was before-mentioned, was waiting from the time he had received Sir William Wheeler's letter, in expectation of seeing Mr. Bucknill and Mr. Snow, the plumber and carpenter being then there, ready to open the coffins. About three o'clock in the afternoon Mr. Bucknill arrived, when Mr. Donellan immediately asked him if the men should begin to open the coffins? who said, no, not till Mr. Snow should come; and expressed some surprize at his not being there, as, he said, he had appointed to meet him at that time punctually.

Mr. Bucknill waited some time, and then told Mr. Donellan, that he could not wait any longer at that time, but would call again, and desired that Mr. Snow might wait, if he should come in the mean time. Mr. Donellan pressed him very much to stay, in the presence of at least thirty of the tenants, who were then there ready to attend the funeral (the same having been previously fixed for that day) but in vain*.

Mr. Snow waited a considerable time for Mr. Bucknill's return, and his not coming, he told Mr. Donellan he could not stay any longer, upon which Mr. Donellan proposed that the coffins should be opened, and that he, Mr. Snow, should proceed to open the body, who declined it. Mr. Donellan again pressed the same, saying that as most of the people, who were invited to the funeral, were tenants, and lived at no great distance, they would attend again on a future day; whereupon Mr. Snow requested to speak with the women who had sat up with the body, and also with the plumber and carpenter, and after questioning them in private, respecting the state of putridity the same was in, and, being told by the plumber, that every time he folded and unfolded the leaden coffin he was obliged to make it so hot, that he could not touch it without burning himself; he told Mr. Donellan that he could not think of complying with his request, and recommended it to him by all means to have the body buried that night, saying that he was sure Sir William Wheler, on a representation of the circumstances, would approve of it, and particularly as the tenants were all then there, and ready. Notwithstanding which Mr. Donellan still shewed a reluctance, which Mr. Snow observing, absolutely gave orders himself, in the presence and hearing of all the tenants, that the body might be buried, and accordingly the same was buried about seven o'clock that evening, in the family vault at Newbold. On Mr. Snow's taking his leave at Lawford,

* Witnesses were subpoenaed to have proved this, and also that Mr. Donnellan told Bucknill he should have been happy if he had attended the night Mr. Wilmer and Dr. Rattray were there, but the Counsel did not think it material to call them.

ford, Mr. Donellan gave him six guineas in consideration of the great trouble he had in the whole business, and which he thought the least he could possibly give him.

Soon after Mr. Snow was gone, Mr. Bucknill arrived, but on finding that Mr. Snow was gone, he directly went away again, and appeared glad to do it.

In a day or two after the funeral, a great noise was made in the country, and various false and malicious reports were propagated, tending to criminate Mr. Donellan as the murderer of Sir Theodosius, and to accuse the gentlemen of the faculty, who had been called in to open the body, of having endeavoured to smother it; whereupon it was thought advisable to have the coffins once more opened, and to hold the Coroner's inquest on the body. Accordingly the Coroner, Mr. Fox, of Coventry, was sent for, who attended, and summoned a jury to attend on Saturday the 9th of September, and the eleventh day of Sir Theodosius's death, at Newbold. The said gentlemen of the faculty, in order to wipe off the stigma so unjustly thrown upon their characters, also attended on this occasion; being determined, even at the expence of their lives, to inspect the body.

On Saturday the ninth of September aforesaid, the jury being met, the coffins were taken out of the vault, and again opened. After having been some time exposed to the open air in Newbold church-yard, Mr. Bucknill put on a waggoner's frock, dipped in vinegar, and tied a napkin, also dipped in vinegar, round his mouth and nostrils, and then opened the body in the said church-yard, in the presence of at least five hundred persons, amongst whom, for some time, was Lady Boughton, who viewed the melancholy operation performing upon the corpse of her son without betraying the least appearance of feeling or affection.

When the body was opened the other gentlemen of the faculty went up to it and examined the same, and were of opinion it was in a mortified state; but when it is considered how long Sir Theodosius had been dead, the excessive heat of the weather at that time, the circumstance of the body having been heated six times to the degree it was by the folding and unfolding of the leaden coffin, and also considering that the fumes of lead have a particular tendency to the accelerating putrefaction, the body was not more mortified than might reasonably be expected.

It seems, according to what has since transpired, that a quantity of thick fluid, of a brown colour (which was the colour of the phlegm said to have been taken by Sir Theodosius) was found in the stomach, which, on being examined, proved to have no sort of grittiness or any metaline particles in it; and it has also since transpired, that the stomach was less inflamed than the neighbouring parts; a circumstance which, it is reasonable to suppose, would not have been the case, had Sir Theodosius been poisoned; for the stomach, instead of being less inflamed, certainly in that case would have been more inflamed than any other part; and it is also reasonable to suppose, that had any poison ever been therein, some relics of it would have remained.

The more natural supposition as to the cause of Sir Theodosius's death seems to be this, that the nauseousness of the medicine occasioning a sickness, he burst a blood vessel in the course of his straining, which brought on the epilepsy or convulsions, described by Lady Boughton; and this idea is very strongly supported by the circumstance of upwards of a pint of extravasated blood appearing on each side the thorax or breast, which it has lately transpired was the case.

That convulsions are always the effects of a loss of blood is a matter known to every one, and a butcher's slaughter-house will furnish us with instances of it every day. A sheep never dies under the hands of the butcher, but it goes off in convulsions, and the same may be said of a cow or any thing else.

But indeed, without any such primary cause as before mentioned, many instances have been known, where persons in perfect health have been suddenly seized with the epilepsy, and expired in convulsions in less time than Sir Theodosius did. One remarkable instance of this kind of death happened in the case of Sir

Sir Theodosius's father, the late Sir Edward Boughton, who died in the same manner that his son did, at a time when he was in perfect health, and also afterwards turned black about the face, and upper part of his body, and which is a circumstance very common in convulsions, the violence of the fit forcing the blood into those parts, where, on circulation being stopped by death, the same must of course remain*.

But in order to prove that Sir Theodosius did not die by poison, a circumstance has lately transpired, which, it was intended by Mr. Donellan's adversaries, should have remained an entire secret, and which is, that Mr. Bucknill, the person before mentioned to have opened Sir Theodosius, preserved the fluid which was taken out of his (Sir Theodosius's) stomach, and tried it upon a dog, which only made him a little sick, and had no worse effect †.

About the same time some experiments of different poisons were tried by Mr. Bucknill upon dogs, and one dog being killed thereby, it was spread all over the country, that it was the fluid taken out of the stomach of Sir Theodosius which had done it, and was, to Mr. Donellan's prejudice, very generally believed, and Mr. Bucknill never took any steps to undeceive the country in that matter.

From the time of the death of Sir Theodosius, to the time of the funeral, Mr. Donellan was not out of the house, nor from that day was he further than the deer-park, till the said 9th of September, when he attended the inquest at Newbold, pursuant to a summons from the Coroner for that purpose. Before Mr. Donellan's attendance at Newbold, he heard that Mr. Newsam (a gentleman before mentioned) had expressed more anxiety to have the body of Sir Theodosius opened, and the inquest held, than any one else in the neighbourhood, and that he had invited Lord Denbigh to dine with him that day, in order that his Lordship might exert his influence on the occasion; and therefore, he (Mr. Donellan) not thinking Mr. Newsam was his enemy, wrote a letter to him, desiring that he would attend the inquest, and prevail upon Lord Denbigh to attend with him likewise, meaning nothing more thereby, than a wish to have his character cleared up, not only to Mr. Newsam, but more materially to Lord Denbigh, whose representation of it to the world might have had weight, and might have alleviated Mr. Donellan, under so cruel and unjust an accusation, more than any thing else. Mr. Newsam wrote an answer to this letter, expressing a friendship for Mr. Donellan, and assuring him, that he should consider the contents of his letter, and communicate the same to Lord Denbigh.

When Mr. Donellan waited upon the Coroner and Jury, the Coroner asked him if he chose to remain in the room while the witnesses were examined, who replied, that he had no objection; accordingly he continued in the room during the examination of the witnesses, and, in the course of Lady Boughton's examination, when she spoke of her daughter's maid telling her, that Mr. Donellan was not at home, she spoke "*maid*" so low, that Mr. Donellan did not hear it, and thinking that she said "*her daughter*," he pulled her by the sleeve, and told her she had made a mistake, for that her daughter (Mrs Donellan) was not up at the time; whereupon Lady Boughton recalled her words, and said, "*she meant her daughter's maid*." This was the whole Mr. Donellan meant by pulling Lady Boughton's sleeve, but the same hath been construed by the malicious very invidiously against him ‡.

When the examination of the witnesses was over, the Coroner, Mr. Fox, went out, and sent for Mr. Donellan to the door, telling him that he sent for him there, in order to talk to him about the expences of the Inquest, and asked him if the county or the family were to be at the expence, who replied, that he should hold it disgraceful to suffer the county to be any expence, and added, that if he, Mr. Fox, would let him know what the whole expence was he would then discharge it, who said that he could not just at that time tell him, but that he would call upon him at Lawford, in his road home, and
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* Witnesses were subpoenaed to prove the manner of Sir Edward Boughton's death, and that the symptoms and appearances afterwards were similar to those of Sir Theodosius, but the Counsel did not call either of them.

† The Counsel did not cross-examine Mr. Bucknill as to this or any thing else.

‡ The Counsel did not cross examine the man that proved the matter of pulling the sleeve at all.

let him know exactly what the same amounted to, and further said, he was very happy to inform him, that all suspicions must then end.

Mr. Donellan then took his leave and returned to Lawford, fully satisfying himself that the Jury would go home convinced of his innocence, and in about three or four hours afterwards Mr. Fox, and Mr. Wilmer the surgeon, who both lived at Coventry, and had agreed to go home together, called at Lawford, and being shewn into the large parlour adjoining to the Hall, Mr. Donellan first, and Lady Boughton and Mrs. Donellan soon afterwards, waited upon them there. Mr. Donellan asked Mr. Fox if he could as then inform them of the whole expence attending the inquest, who replied, that he had not been able to complete the inquisition, and had adjourned it till the next day, being Sunday the 10th of September, therefore that he could not till the whole was compleated say what the expence would be, upon which Mr. Donellan gave him seven guineas on account, which he received, and promised to let him know the next day what the whole expence would be. Mr. Donellan also paid Mr. Wilmer five guineas for his great trouble and the disagreeable business he had gone through, and on Mr. Wilmer's informing him that the rest of the gentlemen, of the faculty having patients to visit in the neighbourhood, could not attend with him there, he desired him also to take five guineas a piece for them, which he did, and which he afterwards paid to them. Mr. Wilmer and Mr. Fox then went home to Coventry, the whole time of their being at Lawford-hall, not exceeding half an hour.

This matter of Mr. Wilmer and Mr. Fox, calling at Lawford, was the interview so invidiously stated in the papers to the prejudice of those gentlemen's characters.

On the next day, Mr. Donellan was informed that Mr. Fox had sent a messenger to the jury to let them know, that he could not attend that day, and desired their attendance to complete the inquest on the Thursday following.

This was a very unfortunate circumstance for Mr. Donellan, as it gave his enemies and those who wished to take away his life, an opportunity by the most malicious falsehoods of prejudicing the jury against him, notwithstanding they before seemed very well satisfied from what had passed, that he was entirely blameless.

On the Thursday Lord D—— and Mr. B——d, with many other respectable persons attended the completion of the inquest, and Lord D—— had a private interview for upwards of half an hour with Lady Boughton before she went into the room to be again examined, and if there was a possibility of judging from her looks directed to his Lordship, and his in return, during the examination, there does not remain a doubt but that his Lordship had said something to her in the course of their interview, which had very much terrified her;—for every time that any thing was said which was thought to militate against Mr. Donellan, she looked at his lordship, who never failed to return a nod of approbation. We will suppose that Lord D—— (from his general character) did this from a good motive, but it was thought prudent to mention it.

It is also to be further observed, that since the inquest was taken, several gentlemen in the neighbourhood of Lawford-hall, have, at different times, sent for the witnesses against Mr. Donellan to their respective houses, and extorted many things from them which are intended to be adduced at the trial. They have even gone so far as to threaten them with imprisonment and other punishments, and calling in their clerks, several times have given them absolute orders to make out commitments, if they did not say something more against Mr. Donellan.

From these tortured re-examinations, reports have been continually spread of fresh facts having come out, and the same have tended to heighten the prejudice of the people very much against Mr. Donellan.

Mr. Donellan was not from Lawford-hall, further than the deer-park, from the 9th of September to Thursday the 14th. On that day the jury met again, and delivered in their verdict, Wilful Murder,
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against him, and he was thereupon taken into custody, upon the Coroner's warrant, and carried first to Rugby, then to Coventry, and from thence to Warwick, where he was committed a close prisoner in the goal there, and loaded with irons, to which he submitted with the greatest fortitude; not wishing to fly from his fate, being conscious that he should on his trial vindicate his honour and innocence to the whole world.

It would be endless to take notice of the various reports propagated, with a manifest intention to injure Mr. Donellan in the eyes of the public; it is sufficient to say that few of them have the most distant shadow of truth for their basis.

Among the various other things which have been circulated to his prejudice, it has been said, that Mr. Donellan once advised Sir Theodosius to keep his physic in his bed-room, and not to put it into the room adjoining, which he usually kept lock'd, and that Lady Boughton heard him give her son such advice, Mr. Donellan does not disavow giving Sir Theodosius such advice, nor the circumstance of his mentioning it before Lady Boughton; a matter which alone ought to convince every rational person, that his intention in doing it was good.

The fact was, that Sir Theodosius being used to amuse himself with mixing up poisons for destroying rats, and for various other purposes, and happening to say once when Lady Boughton was present, that he was near taking a bottle of poison instead of his physic, Mr. Donellan advised him, in the most friendly manner, for the future, to keep his poisons separate from his physic, and to put one of them in the bed-room, and the other in the room adjoining, and then he would not be liable to such mistake in future; and this he did merely from a good motive, and indeed to suppose, if he had had any other view in it, that he would have mentioned the same before Lady Boughton, when he had so many opportunities of doing it privately, is absurd to the last degree*.

Another circumstance of Mr. Donellan having bought arsenic, has also been spread about the country with every malignity which ill-nature could suggest. He had occasion to go to Rugby one morning, which Sir Theodosius knowing of, requested him, before Lady Boughton and Mrs. Donellan at breakfast, to bring him a pound of arsenic from Mr. Powell's, which Mr. Donellan expressed a wish to decline; upon which Sir Theodosius grew warm, and said, that if he would not bring it, he should not have his (Sir Theodosius's) mare to ride upon that morning; whereupon Lady Boughton interfered, and advised Mr. Donellan to bring it him, who still declined, but being pressed by her Ladyship to comply, he at length consented to bring a quarter of a pound, and no more, saying that was sufficient to destroy all the rats in the parish, and asked Sir Theodosius if he had used all that he (Sir Theodosius) had bought at Coventry, who replied, that he had. When Mr. Donellan returned, he brought a quarter of a pound of arsenic in a lump, which, lest he should forget, Sir Theodosius had made a written memorandum of, and which memorandum Mr. Donellan has lately very luckily found, wherein is contained the article of arsenic amongst the rest of the things, which is a favourable circumstance for Mr. Donellan, as the malicious had handled this matter very invidiously against him.—On Mr. Donellan's delivering the arsenic to Sir Theodosius, he told Mr. Donellan it would not do, the same being in a lump, and therefore Mr. Donellan, going to Rugby the next day, took, by his desire, the same back again to Mr. Powell to be beat to powder, and, with Sir Theodosius's directions, to send three quarters of a pound more, which Mr. Powell complied with, and accordingly sent the same by Samuel Frost, the servant boy.

It has likewise been asserted, that Mr. Donellan was very much benefited by the death of Sir Theodosius, and that he came into the possession and absolute dominion of a considerable estate thereupon, in right of his wife. His wife and children are benefited by the death of Sir Theodosius; but Mr. Donellan is not absolutely so; for on his marriage he executed a settlement, which will speak for itself, and by which it will appear, that he not only debarred himself of *any controul* over his wife's then fortune, which was three thousand pounds, but also of *all property whatever, real or personal*, which might afterwards fall to her, *either by descent, gift, devise, or otherwise*; and that he has even excluded himself

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* If the Counsel had cross examined Lady Boughton, this matter might perhaps have come out.

the benefit of what is almost always invariably reserved to the husband, which is the right of possessing all or some part of the wife's fortune for his life, after her decease; a matter which Mr. Donellan cannot do; therefore he could not in fact be said to have any *absolute* interest in Sir Theodosius's death.

But in order to prove the contrary, and that it certainly was his interest he should live, Sir Theodosius had (as is well known to Lady Boughton) promised, that on his coming of age he would present Mr. Donellan to the living of Great Harborough, worth upwards of two hundred pounds a year, now in the possession of Mr. Newsam, on the presentation of Lady Boughton, and Sir William Wheeler until Sir Theodosius should be of age, in case he (Mr. Donellan) would take orders, which he has been preparing to do for these two years past, in consequence of such promise. It is also well known to Lady Boughton, that Sir Theodosius likewise promised to give him the living of Newbold upon Avon, worth upwards of two hundred pounds a year more, on the death of Mr. Parker, the present incumbent, who is infirm, and near 70 years of age. So that had Sir Theodosius lived, Mr. Donellan would have been in the certain possession of a maintenance for his life, which he is not now sure of; therefore it must appear clear that he could have no *absolute* interest in Sir Theodosius's death. But indeed, so far from Mr. Donellan's having ever shewn any premeditated malice or design to take away the life of Sir Theodosius, he has always done his utmost to preserve it, and on many occasions discovered a great regard for him.

In August, 1777, Mr. Donellan made his will, by which he disposes of his property to Sir Theodosius, after the death of Mrs. Donellan, in case she should die without issue by him, and which will was made by a Mr. White, an attorney, in Castle-yard, Holborn, and is ready to be produced*. Besides which, Mr. Donellan has also, in many other instances, shewn a regard for Sir Theodosius, and ever been ready to assist him with his advice, which he seldom attended to. But though Sir Theodosius never, or very seldom, attended to his advice, yet, to prove that he nevertheless believed Mr. Donellan his friend, and one who had his interest at heart, he never was concerned in any broils or quarrels, which were many, but he always sent for, or applied to Mr. Donellan to extricate him from them, in preference to any body else, as is well known to Lady Boughton and others.

He quarrelled with a Mr. Wildgoose, of Daventry, at Rugby assembly, in the summer 1779, and challenged him to fight. Mr. Donellan desires no other justice than that Mr. Wildgoose, whom Mr. Donellan never before saw, or has since seen, may relate the humane part he took, when Sir Theodosius sent for him post to Lawford, out of his bed, to be his second—a matter which Lady Boughton must well recollect, as she delivered the letter Sir Theodosius sent on the occasion, to Mr. Donellan, at his bedside†.

Another time Sir Theodosius challenged the Rev. Mr. Charters, of Rugby, at Rugby assembly also, and sent immediately to Lawford-hall for Mr. Donellan, who instantly attended, but did every thing in his power to prevent the matter going any farther, and really settled and ended the same, which Mr. Charters, Mr. Clay, and Mr. Loggins, of Rugby, can testify‡.

At Bath, likewise, Mr. Donellan, as has been before mentioned, appeared in the same character for Sir Theodosius, in several disputes he had there, which Lady Boughton, as has also been before mentioned, can prove§. She can likewise prove, if she pleases, that she has oftentimes remonstrated with Mr. Donellan, and advised him to let her son take his course, and never to interfere in his quarrels, and hinted, as a reason for her giving him such advice, that he was preparing to take orders, and that therefore it was improper for him to appear on such occasions, as the same might be misrepresented by his enemies.

Another time Mr. Donellan really saved the life of Sir Theodosius, the particulars of which are as follows:

Sir

* The Counsel did not think proper to take notice of this will in Court.

† This was proved on the trial.

‡ This also was proved on the trial.

§ Lady Boughton did prove this on the trial.

Sir Theodosius happening once to be with Lady Boughton and Mr. Donellan, at the Rev. Mr. Parker's of Newbold, asked him, Mr. Parker, for the key of the church, saying that he wanted to go upon the top of it. Mr. Donellan, knowing how careless he was, thought it would be imprudent to let him go alone, and therefore went with him. When they had reached the top of the church, Sir Theodosius wanted to get up to the weathercock to try if he could turn it. Mr. Donellan dissuaded him from the same, but he insisted upon doing it, and accordingly made the attempt, but just as he had reached the top his foot slipped, and had not Mr. Donellan caught him in his arms he must have been inevitably killed. The blow Mr. Donellan received upon his breast, on this occasion, by Sir Theodosius's falling full upon it, was so violent that it turned him sick immediately afterwards, which is a circumstance well known to Lady Boughton, who must also recollect Sir Theodosius telling her in the coach, as they returned home how the whole matter was, and his saying, that he must have been killed if his brother had not saved him.

Sir Theodosius likewise often subjected himself to danger in swimming, which Mr. Donellan hearing of frequently, advised him, in the presence and hearing of Lady Boughton and others, never to go out of his depth, nor into the water without bulrushes or bladders, and even once or twice pulled up the bolt of the pond in the garden, where Sir Theodosius frequently bathed, in order to reduce the water within his depth*.

These matters would not have been dwelt upon so particularly, had it not been reported, that Mr. Donellan has oftentimes led Sir Theodosius into danger, and taken every opportunity to get rid of him; but that report having prevailed, and as it is supposed many trifling actions and expressions of Mr. Donellan, will be brought against him, in order to prove that he wished to get rid of Sir Theodosius, it was thought proper to mention these circumstances to contradict the same.

It has been said, and spread about the country, that Sir Theodosius wanted no more than a month or two of being of age, and that Mr. Donellan had suspicions of his marrying a Miss Fonnereau, and that as he, Sir Theodosius, had invited the young lady's brother to Lawford, the week of Sir Theodosius's death, and was to return with him when he went back, he perpetrated the horrid deed ascribed to him under the idea that he should have no opportunity of doing it while Mr. Fonnereau was at Lawford, and that if Sir The. returned with him he would be of age, and would marry Miss F. before he came back, and then that the chance of possessing his estate would be quite gone. This is the matter as it has been represented to the world; but in regard to the matter of Sir Theodosius's being of age within a month or two at the time of his death, the fact was, that he then wanted eleven months of it; and in regard to the other matter of his marrying Miss Fonnereau, no one except Lady Boughton ever entertained the least suspicion of the kind. Her ladyship, indeed, frequently expressed apprehensions of it, (as she did of almost every young lady he had the least acquaintance with) and a little before Sir Theodosius's death told Mr. Donellan, that she had been able to discover, by letters which had passed between her son and young Mr. Fonnereau, that he (Mr. F.) was to be at Lawford in a very short time, which she said she did not at all like.

It has also been further propagated about the country, that Mr. Donellan made use of a still, and that he distilled poisons in it, and in order to prevent a discovery had put lime into the same. He acknowledges he had a still, but never used it for any other purpose than distilling Lavender and Rose waters, and as to the matter of putting lime and water into it, he did that merely to destroy fleas. He likewise put lime and water into a bucket, and other things as well as into the still, and the reason of his using the still at all, upon that occasion was, its being nearer at hand than any thing else. When he had put the lime and water into these things, he placed the same under his child's bed, and his own, and frequently wet the bedsteads with the water, as the women servants can testify, and which is a plain proof that he had no other motive for making use of the lime and water than for the purpose of destroying fleas. But, what puts the matter beyond a doubt is his putting lime into the pot or bottom part of the

* Counsel were instructed to cross examine the gardner as to this but did not do it.

the still only, for if he had done it with an intention of taking off the smell of any particular poison, he should have put it into the upper part of the still as well as the lower part.

It was also said that he used Laurel leaves, and as the same are said to be of a poisonous nature, many cruel aspersions have been propagated on that head—he acknowledges that he has at times used Laurel-leaves, but then it was along with other ingredients for preparing an aromatic bath for his feet, which he constantly used after a fit of the gout, and found it to be very strengthening and serviceable. He often recommended this bath to Lady Boughton, as she no doubt will recollect. He took the receipt for the preparing it from a book entitled, ‘The toilet of Flora, published in the year 1779, and which is ready to be produced, if it should be found necessary.

It has been further reported, that one of the servants has, after a tortured examination, confessed seeing Mr. Donellan in Sir Theodosius’s bed room in the afternoon of the twenty-ninth of August, after Samuel Frost had returned with the phycic.

At the time Samuel returned with the phycic all the men servants, himself excepted, were gone to the river to fish, and did not return until after Mr. Donellan was gone to bed, and all the women servants were during the whole of that day ironing in the kitchen, and busy in a wash.—Therefore if either of the women servants are to prove this, she must state the particular time she saw him, and the other servants must recollect her being absent from them at that time, for it was impossible to see Sir Theodosius’s room, or the stair-case which leads to it from the kitchen.

Sarah Blundell, one of the said women servants before-mentioned, is since dead; she, amongst the rest, was examined four different times, and it is said that some secret information was obtained from her which very materially affects Mr. Donellan’s life. What this information is has not transpired, but whatever it may be, the same being taken before a justice of the peace only, should not be suffered to be read; and indeed the same ought not to have any weight with the jury in case the Judge should permit it to be read, for she was a woman of known bad character, and died in child-birth of a bastard; a matter which she so artfully concealed, that nobody suspected any thing of the kind till she was taken in labour, and even then she did not confess what was the matter with her, till it became so apparent that every body must know, which shewed rather a disposition in her to have murdered the child, in case she had an opportunity.

During the time this woman was in labour, she was so extremely ill, that it was expected she would die before a delivery; and, as Mrs. Donnellan was particularly humane to her, she told her, in the presence of Sukey Sparrow, Mrs. Donnellan’s maid, that she knew no harm of her husband, and that she told Mr. B——, every time he sent for her, she knew nothing against him. This was spoke at a time when she thought of dying every moment, but she lingered upwards of a fortnight afterwards, and, during that time, every unfair advantage was taken to extort things from her, and Mr. Caldecot, the Solicitor in this prosecution, was with her the day of her death, but she was speechless that day, and the day preceding, which must be taken notice of, in case he should attempt to prove any information obtained from her that day. Notwithstanding Lady Boughton had a coach and chaise, she sent this woman away from Lawford, at the time she was so ill, in a cart.

Sufannah Sparrow, Mrs. Donellan’s maid, was another of the said three servant women who were ironing, and as she, like all the rest of the servants, has underwent tortured examinations, it is said she is to be brought as a material evidence against Mr. Donellan.

Mrs. Donellan kept this girl in her service a considerable time after Mr. Donellan’s commitment; but Lady Boughton telling Mrs. Donellan, that she *knew Sukey to be a thief, and a bad girl*, Mrs. Donnellan thought it prudent to part with her, and accordingly discharged her very soon afterwards, upon which Lady Boughton immediately took her into her Ladyship’s service.

While the said girl lived with Mrs. Donellan, she (Mrs. Donellan) took her to Warwick gaol, when Mrs. Donellan went to see her unfortunate husband the beginning of October last, (which was the only time she visited him there) and during the time she was with him, Sukey remained in the kitchen of Mr. Roe, the gaoler, adjoining to the gaol, where she had a conversation with a Mr. Derbyshire, who was then, and is now, a debtor in the said gaol.

This conversation was begun by Mr. Derbyshire, who knowing the said girl was Mrs. Donellan's maid, and having heard that she had said something against Mr. Donellan at a country wake, asked her if what had been said about the matter was true, who said it was not, and farther said, that she knew nothing against Mr. Donellan; she also said, that she believed he was as innocent of the charge brought against him as the child she then had in her arms (having at that time Mrs. Donellan's youngest child in her arms) and she likewise told Mr. Derbyshire, that she had been sent for several times before the Justices, and threatened by them, unless she disclosed what she said at the country wake; and that she told them she said nothing against Mr. Donellan there, nor knew any thing against him.

One Thomas Bayly, another debtor in the said goal was present and heard the above conversation, and also heard the said girl afterwards say, in the garden adjoining to the goal, that she was sure her master was innocent, and wondered much at Lady Boughton's conduct towards him.

Mary Douglas, a servant girl of Mr. Roe, the gaoler, was also present, and heard the above conversation, and she had likewise another conversation with the said Sukey Sparrow, who again repeated what she said before, and cried, saying at the same time, that she was sorry to her soul for her master, and was surprised at Lady Boughton's cruel and inhuman behaviour.

On Mr. Donellan's telling Mr. Webb what the above-mentioned Mr. Derbyshire could prove relating to Sukey Sparrow, Mr. Webb asked him [Derbyshire] as to the truth of it, who avowed the same, but advised him not to subpoena him, because if he should be cross-examined, he said he should not be a favourable witness for Mr. Donellan. Thus, at that time, he swears to have been a friend to Mr. Donellan; but since then a quarrel has taken place between them, owing, as Mr. Donellan says, to his refusing to give Derbyshire money;—and he further says, that he immediately thereafter sent for Mr. Caldecot, the attorney for the prosecution, and told him all he could say, who directly subpoena'd him. What he is to swear is, that in a conversation which passed between him and Mr. Donellan, he, Derbyshire, asked Mr. Donellan if he thought Sir Theodosius had been poisoned, who said he thought he had: that he, Derbyshire, then asked him whom he thought the suspicion lay upon: that he, in reply, said he thought it lay upon Lady Boughton, Mr. Powell, Sir Theodosius's footman, or the servant girls.

But tho' Mr. Derbyshire will swear these things, yet he acknowledged before Mr. Webb, that Mr. Donellan declared himself innocent of ever having had any hand in poisoning Sir Theodosius, and also that he said he never saw the bottle Sir Theodosius's physic was contained in, or knew any thing at all of it, till Lady Boughton shewed the same to him on the morning of Sir Theodosius's death.

Derbyshire is a man who had a good deal to do in the bill way, and though we know not enough of him to say any thing against his character, yet if report be true he does not bear the best in the world. It is certain that he has been a bankrupt twice, and it is now said that he is at present in goal on a friendly suit for a debt of 500l. in order to take the benefit of the expected insolvent act, and that this is not the first time he has been in goal on the like occasion.

It is further said, that this Derbyshire was very much connected with the famous Mr. Pope, who commenced the prosecution against Sir Alexander Leith, and was a principal adviser in that business. Judge Buller tried the said prosecution, and probably may recollect the name of Derbyshire. Sir Alexander afterwards commenced an action against Pope, and obtained a verdict for 10,000l. Since then Pope
has

has absconded to avoid payment thereof, and proof can be brought that he has absolutely been to see Derbyshire in Warwick goal.

It is expected evidence will be called to prove, that Sir Theodosius was in a good state of health for some time before his death; but Mr. Powell can contradict that; indeed a letter from the said Mr. Powell to Mr. Donellan, dated the 13th of June last, in the following words, viz: "Sir, please to inform Sir Theodosius Boughton that I mean he should take the bolus over night; the purge the next morning; and the apozem, the same morning," will shew, that Sir Theodosius was far from being well. This letter will also serve as a specimen of the many violent medicines Sir Theodosius was continually taking, and tend to prove the weak state his body must of course be reduced to thereby; but Mr. Powell can prove that Sir Theodosius was reduced to nearly a skeleton at his death, and that his irregularities checked the effects of his [Mr. Powell's] medicines; and also, that Sir Theodosius was troubled with a venereal complaint from his [Mr. Powell's] first attendance on him, and that he had a bubo in his groin when he died.

It is not wished to observe any thing to the prejudice of Mr. Powell, he being, in general, considered as a well-meaning man, but his conduct in this business has certainly been very extraordinary.

It undoubtedly would have been natural for any person in Mr. Powell's situation on his arrival at Lawford the morning of Sir Theodosius's death, to have examined Sir Theodosius, and have tried some expedients for recovering him, and particularly as the medicine sent by him was then said to have caused his death; but instead of attempting to bleed Sir Theodosius, or to take any steps to recover him, Mr. Powell only took hold of his hand, and putting it down again, said, "he is dead," and then went out of the room, and did not ask a single question, but wishing Mr. Donellan and Lady Boughton a good morning, went away; the whole time of his being there not exceeding ten minutes.

It is said that Mr. Powell is to prove his having administered the same kind of medicine to Sir Theodosius, as he took the morning of his death, several times, and that the same never made him sick before, or had any ill effect, yet when William Frost went to fetch Mr. Powell the morning of Sir Theodosius's death, Mr. Powell said on William's relating what had happened, "*that he expected the medicine would make Sir Theodosius sick* *". He must also well recollect that Sir Theodosius once told him in the hall at Lawford, when Mr. Donnellan was present, that the physic he sent him always made him sick, and that he, Mr. Powell, promised to alter it in such a manner, as not to come off his stomach. He must likewise recollect, that Mr. Donellan, at the same time informed him, (Mr. Powell) that Sir Theodosius made a common practice of going into the water, and that he desired Mr. Powell to tell him of the dangerous consequences which might attend the same, so ill as he then was, and to dissuade him from it all in his power. Mr. Powell acknowledged his recollection of this to Mr. Webb.

Mr. Powell likewise acknowledged to Mr. Webb, that Mr. Donnellan, more than once mentioned to him, that he had been able to discover that Sir Theodosius took and used mercury privately, and that he had confessed the same to him; and that he, (Mr. Donnellan) desired him (Mr. Powell) to take Sir Theodosius to task about it, and to caution him against the like in future. Mr. Donnellan says, that Mr. Powell also told him, he had often thought Sir Theodosius made use of Mercury privately, from his flobbering at his mouth; and that, he said, he must physic him roundly to lower it; but he did not acknowledge that to Mr. Webb. The said Mr. Powell can further prove, that on the day of the body being opened, he (Mr. Powell) followed Lady Boughton and Mr. Donnellan out of Mr. Parker's house, as they were going to mount their horses to return home, and that he then told them he was as glad as though any body had given him fifty pounds, that Sir Theodosius had been opened, *and that he was present*; for that nothing was more free from poison. †

Thus,

* William Frost, it has been before observed, was not cross-examined at all.

† It has been before observed, that Mr. Powell was not cross-examined at all.

Thus, whatever Mr. Powell may be brought to prove, ought not, after these declarations, to have any weight.

It is also said that Francis Amos, the gardener, is to be brought to prove a conversation between him and Mr. Donnellan; and that in the course of the same, Mr. Donnellan told him that Lawford Hall would soon belong to him.

Since Sir Theodosius's death, Mr. Donnellan recollects the said Francis Amos asking him in the garden, whom Lawford Hall then belonged to, and that he told him it belonged to the present Sir Edward Boughton, who succeeds to the title and part of the estate of the late Sir Theodosius; but as to the matter of saying to him or any body else, that it would soon be his, the absurdity of such a thing is alone sufficient to contradict it.

The circumstance of calling this man as an evidence, is a convincing proof of the unfair advantages which have been taken against Mr. Donnellan; for on the inquest, he (Francis Amos) was particularly examined by the Coroner, and it appearing that he knew nothing either for or against Mr. Donnellan, his name was not mentioned in the depositions.

But the poor fellow being a weak, silly, illiterate man, and having been threatened with punishment, matters were extorted from him which he knew nothing of, and which were entirely false and groundless.

It is apprehended that Dr. Rattray will give as unfavourable an account of this business as he can, but whether, from his being very much connected with Sir William Wheeler, and from hopes thereby of pleasing him, or from a wish which he may have to gain popularity, by setting up his opinion in contradiction to every other gentleman of the faculty, (which he did at one time) or from what other motive, is not at present known; but it is certain, that he has given evident proofs of partiality; and also, that he has had a principal share in the management and direction of the prosecution against Mr. Donnellan; as a proof of which, the brief for the prosecution was shewn to him as soon as completed, for his approbation. He has, in many companies, even went so far as to say, "*We shall subpoena such a person; and we shall do this, and we shall do that,*" which are strong proofs of the part he has taken, but as he (Dr. Rattray) will not be able to say, that he has *ever been applied to in the case of death by poison*, it is hoped his single opinion will not have much weight: He has been absurd enough to say, that Sir Theodosius *was poisoned with arsenick*, but, on reasoning with some other gentlemen of the faculty, respecting the effects of arsenick, he found it would not produce the symptoms which are said to have been the consequence of the medicine taken by Sir Theodosius. Indeed it is well known to the faculty, that *arsenick never operates in less than six or seven hours*. He then said, that by mixing laudanum with arsenick, it would have the effects before mentioned, in which he was equally absurd, as the effects of that mixture would produce less likely consequences.

It is further to be observed, that Dr. Rattray has talked of this matter in all companies, and conversations, wherever he has mixed, and oftentimes contradicted himself, the reason of which is not to be wondered at. He has, as was before mentioned, never been called in to a patient in a case of poison, but has gathered all his knowledge on the subject *merely* from books, and *killing dogs and cats*.

He has been trying experiments upon dogs and cats for some time past, and, it is said, is to prove, from these experiments, and his reading, that several things will cause death in as short a time as that in which Sir Theodosius died, yet the same cannot be read in evidence.

Dr. Rattray has further said, as a reason, to prove Sir Theodosius's being poisoned, that there must be a primary cause to all convulsion; in answer to which it may be said, that there must be a primary cause to every thing which happens, but in the present case the primary cause was apparent, viz. the loss
of

of blood, a pint of the same as was before mentioned, being found on each side of the thorax or breast*.

Mr. Wilmer's conduct in this business, has been as contrary to Dr. Rattray's as possible. He has observed the strictest impartiality, and has ever been consistent, as well in what he said before the Coroner, as in his behaviour and conversation since. † He is a man of the first eminence in his profession of a surgeon in Warwickshire; and his character as a gentleman, and a man of humane disposition is universally known.

With respect to Lady Boughton, after having thus far perused the case, it must be unnecessary to expatiate upon her character and disposition. From the many different representations made to Mr. Donnellan of the part her Ladyship had taken against him, added to her conduct upon Sir Theodosius's death, at one time induced him to believe, that if Sir Theodosius had been poisoned, she was the perpetrator of it, and that in order to excuse herself, had endeavoured to throw it upon him. And filled with this idea he has said and done many things which the world have construed as indicative of an intention to criminate her Ladyship, and which it is said are to be brought as weighty matters against him.

The first matter which is to be adduced, 'tis said, is a letter he wrote to his wife since his commitment, which, in his hurry and confusion, he sent to her unsealed, and by which means his adversaries have obtained a copy of it, but which should not be suffered to be read.

In this letter he advises her to quit Lawford, lest she should fall a sacrifice to the fate of her brother; and hints that sudden deaths had been frequent in the family.

What he meant by advising his wife to quit Lawford was, as well to take her from the cruel behaviour of her mother, which she complained of in every letter he received from her, as also from his real apprehensions for her safety; and as to the matter of sudden deaths having happened in the family, as it has been before observed, that the late Sir Edward Boughton died suddenly. The neighbourhood knowing Lady Boughton's cruel disposition, on his death absolutely rumoured it about that she had poisoned him, which was what Mr. Donnellan meant to allude to. He also meant to allude to another circumstance, which was that of her Ladyship's once poisoning all her husband's pack of hounds, which she confessed to Mr. Donnellan as a fact, but told him at the same time that nobody ever knew who did it, and begged of him not to mention it to his wife.

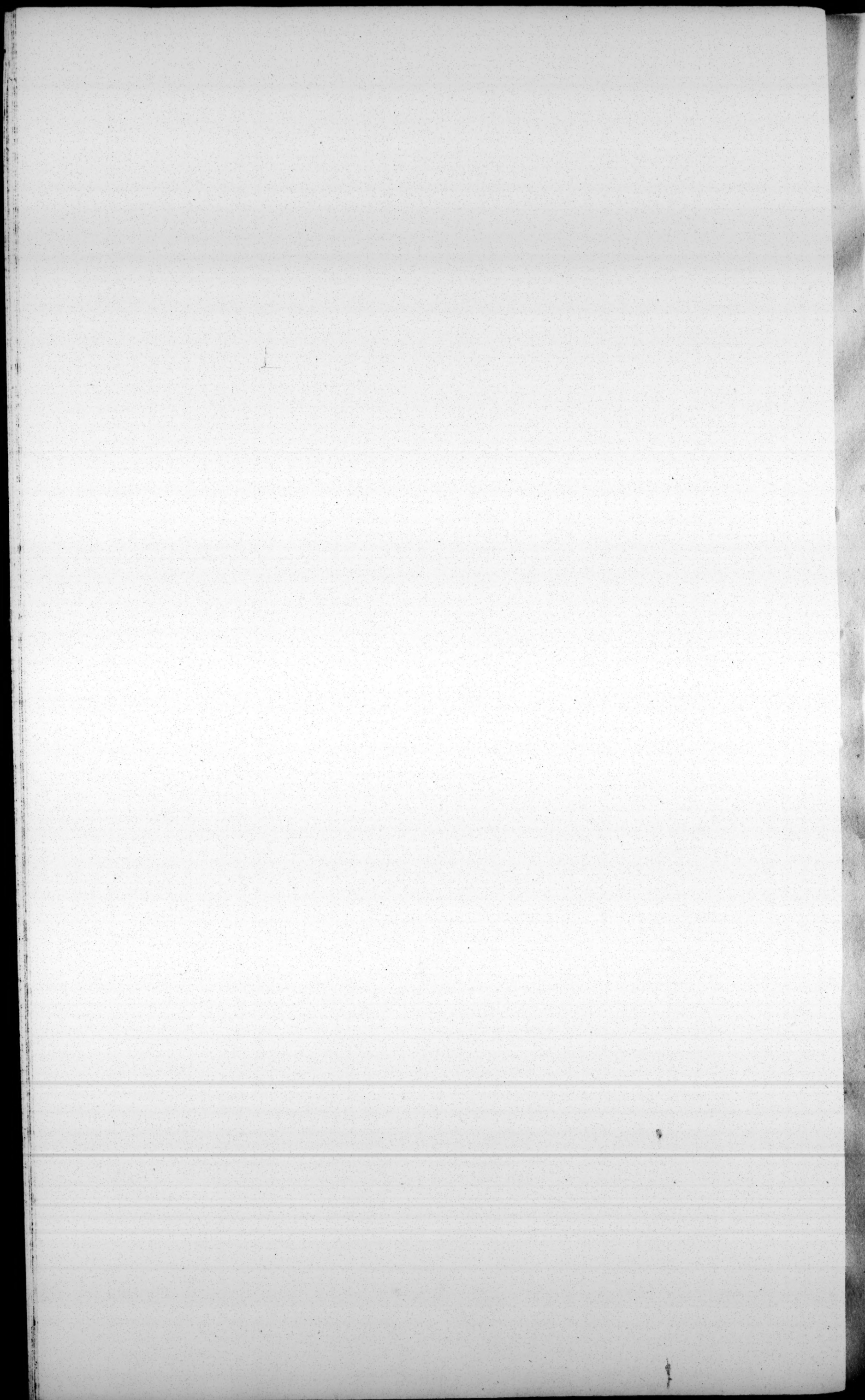
Another matter to be brought against him is a letter he wrote to his wife, requesting her to desire Lady Boughton to confess the matter of poisoning her son to Sir William Wheeler, as the most respectable person in the neighbourhood; which letter he wrote *in consequence of information having been brought to him by Mr. Roe, the gaoler, and others, that she had taken poison, and was then upon the point of death from its effects*;—a matter which is certainly more in his favour than against him, as it plainly implied a consciousness of his own innocence, and a natural desire of having his character justified to the world, by the only positive and expiring opportunity.

N. B. This report seems to have had not the least foundation in truth, yet from the positive manner in which it was represented to Captain Donnellan, the subject of the letter alluded to, was no more than the natural dictates of an innocent mind.

Thus ends the case, and as the greater part of the same is to be proved by the cross-examination of the several witnesses on the prosecution, it is hoped Council will be particular in what is hereafter stated in the proofs, as proper questions to be asked them.

* This gentleman gave evident marks of his partiality when he opened his evidence. The letter or note Mr. Donnellan first wrote, desiring him and Mr. Wilmer to attend at Lawford to open Sir Theodosius's body, being wrote in a hurry, had not that correctness in it which, perhaps, a letter from Dr. Rattray to him would have had. He did not put his name to it, and called Mr. Wilmer, *Dr. Wilmot*. This advantage over the unfortunate prisoner pleased Dr. Rattray, and by way of adding to that unhappy man's distress, he, on being asked whether he received a letter from Mr. D. on the 4th of Sept. answered, *that he received "an anonymous letter directed to him and Dr. Wilmot."* Would it not have been more descriptive of the gentleman and man of feeling, to have said that he received a note directed to him and Mr. Wilmer, which, though no name to it, he conceived to have come from Mr. Donnellan? But there are some men in the world, who, instead of commiserating, exult at other men's distress.

† Since this case was printed in the newspapers, Mr. Wilmer has publicly asserted that Capt. Donnellan had *distilled* laurel water, and that his Solicitors were the only persons acquainted with his having done so. Mr. Webb therefore thinks it necessary now to declare, that neither himself nor Mr. Inge were acquainted with any such circumstance.



D E F E N C E

O F

JOHN DONNELLAN, Esq.

WHEN PRIVATE CHARACTERS are brought forward to the eye of the Public by judicial investigation, it is justifiable to make them still more conspicuous, if the general interest requires it, however disagreeably it may affect individuals ; for were a curtain to be always drawn over them, errors injurious to society would remain undetected, and the welfare of thousands be sacrificed to the satisfaction of a few. I shall therefore make no apology for offering to the public my sentiments on a late very remarkable trial, that of Captain DONELLAN. Much has already been written on the subject, but those who have defended his posthumous reputation, have only examined the evidence against him in detached passages, and have not attempted to reason fairly to any general conclusion. By partial arguments like those, the world could not form any rational ideas on the subject, and it is therefore I have attempted, to investigate the question thoroughly, and lay before the public some general comments on the evidence ; convinced as I am that this unhappy Gentleman was innocent of the crime for which he suffered, and that by convictions, grounded like his, upon loose circumstantial proofs, the security of every man is shaken. It is not, therefore, a private, but a public cause I propose to defend.

IN this attempt I have more and greater difficulties to combat than all the evidence produced on the trial, with all the forced and severe inferences then drawn from it. These, I hope amply to explain and refute ; but there is an adversary whose private and insidious testimony can hardly be done away, as it has been whispered only in the absence of the party, and written in the secret records of the heart.—Mr. Donnellan had many prosecutors, but prejudice was more fatal to him than all the rest. From the adverse face of that circumstantial evidence adduced against him on the trial, erroneous as it was in some parts, and misconceived in all, perhaps he might have escaped, had the question never been heard of till the hour of its legal investigation ; but the tale of slander had circulated with its usual celerity, and rash *pref* ~~prejudicature~~ had already decided on his guilt.

Let

Let me not here, however, be understood to convey the smallest imputation on the very learned Judge and respectable Jury who tried him ; I am perfectly convinced of their impartiality, as far as the human mind is capable of commanding its own impressions ; but this, without offence I may assert, that the influence of pre-conceived opinion is often such as discernment cannot detect, nor integrity resist ; and I would appeal to the Jury themselves, whether they came not into Court with many unfavourable ideas of the prisoner, all received by the conversation of the country, and some, at least, which the evidence was not found to warrant. Prejudice is a deceitful enemy ! In her own form the liberal will resist her, but she gains admission to the heart under many specious disguises ; to some she calls herself discernment, to some superior information, to others horror at guilt, and zeal for public justice. Once received, to expel her is almost impossible, for opinion will exist after facts and arguments are forgotten ; like the writing on the wall, the traces remain, tho' the hand that wrote them is no longer visible.

Let me then deprecate the influence of prejudice, while I appeal to the public for that justice to the deceased, and his children, which the vengeance of the laws has only permitted us now to render them, "the restoration of their honour," if by facts and fair argument I can make his innocence appear.

The former bias is now considerably encreased by the verdict ; and, I grant, not improperly so, for the judgment of so respectable a Court deserves great attention ; but the Jury could only pronounce on the evidence before them ; therefore, if I can suggest a defence, not offered on the trial, founded on facts, not then given in evidence, no want of deference is shewn to the Court, nor can the verdict be brought in argument against me. I solicit only a candid attention, and that the reader will, as much as possible, divest himself of former impressions before he examines this defence ; if then reason shall allow it to be valid, I shall have provided a salutary caution to Juries in similar cases, and restored to this unhappy gentleman that, which, much more than life, was the object of his solicitude ; if otherwise, I hope the motive will excuse the attempt.

Before I proceed to examine and refute the evidence of the Crown, it may be proper to consider a little the nature of that evidence in general. Confessedly, it was founded altogether on circumstances ; no direct proof of the crime being brought, or even attempted ; and the learned Council for the prosecution defended this vague system of evidence, by alledging, that in all cases of murder by poison, direct proof is impossible. To this position I cannot immediately give assent, for it seems evident to me, that a variety of cases may exist wherein the actual commission of the crime may be proved on the delinquent, by direct, positive, and undeniable testimony : but I will not detain the reader by discussing any question here, which has no necessary connection with the Case of Mr. Donnellan, and this is one altogether immaterial to it ; for if circumstantial evidence is the best that can be obtained, it will be admitted on all sides that this defective proof should in its species be made as perfect as possible.

Can it be held, that guilt should be inferred from circumstances which will admit of a milder construction, without straining probability ? Certainly, no ! the facts should not be such as will measure their effect by the credulity of the hearer ; there should be no room left for difference of opinion ; nothing which the confident would receive, and the scrupulous reject, but a compact connected chain of proofs, and reasoning, in which we can discover no break or incongruity but which every judicious and humane mind might yield conviction to, and condemn his fellow-citizen to death upon, without danger of *future* remorse.

Nothing can be more unjust than to convict on circumstances which are not closely interwoven and connected with each other ; for as each taken separately are too weak to prove any thing, their strength can only be derived from their mutual correspondence. To illustrate this by an instance, we will suppose, that in a case of robbery, the property is found in the possession of the prisoner, and the prosecutor swears he resembles the robber. Here there might be grounds to believe him guilty, but why ? for the goods might have been found, or purchased, and the resemblance might be casual. It is then the combination of these two circumstances that gives their effect, and the proof rests precisely on the point.

point of connection. Or, to borrow an illustration from the case before us, there were on the trial of Capt. Donnellan three matters given in evidence, which appeared more material than the rest, viz. That Sir Theodosius Boughton was poisoned; that the prisoner had an interest in his death; and that he betrayed some indications of guilt. Either of these alone could not prove him guilty, but taken together on the face of the evidence for true, they were thought conclusive. Here too then, it was the mutual relation, and junction of the facts, that grounded a conviction. In short, in every case, connection is plainly the ~~fact~~ ^{source} of circumstantial evidence. From all this I draw one self-evident conclusion, that inconsistency in the component parts with each other, in this species of proof, or the refutation of one of them, must necessarily break the chain, and overthrow the whole. said

To give immediately the application of this reasoning, in the case before us, would be to anticipate those comments on the evidence, which I shall presently enter upon. At present I confine myself to general observations, useful perhaps in the sequel, and, if well founded, not unimportant to the public.

Another very natural rule, in judging of circumstantial evidence, is this, that not only particular facts should correspond with each other, but the whole taken together should so compress, and embrace the fact on all sides, as to leave no room for different constructions. It is to be well considered whether there is any probable solution of the whole, without inferring the guilt of the party accused; for it may be possible, as I dare say the reader will be convinced, in the course of these sheets, that without directly refuting the evidence, the sting of its application may be drawn out, in a manner the least expected. When therefore the solid pillars of direct proof are to be supplied by circumstantial props, let the fact be surrounded with them, so as to leave no opening for the shifting gale of opinion to overturn it.

There is another rule which reason and experience will sufficiently recommend, which is, to be cautious of admitting circumstances that do not appear at first as a ground of crimination, but rather grow out of the accusation itself. Such are the expressions and behaviour of the party, after he knows himself charged or suspected upon the observation of those who suspect him; for appearances are to be taken in their fair, obvious effect, as they would operate on an impartial observer, and not as they may be scrutinized by the sallow eye of suspicion, exploring arguments to support an opinion already formed; and, need I add, that as the shame of being suspected, and embarrassment attending it, will often induce a stile of behaviour similar to the apparent consciousness of guilt, a man often will, even to the most impartial eye, exhibit signs of criminality in such a situation, which yet arise from blameless, and ingenuous feelings.

It may be said, if all this nicety is to be observed in the reception of circumstantial evidence, that mode of proving crimes will be extremely difficult; and so it ought, for against such evidence the prisoner has more difficulty in defending himself, than any other. Where all the witnesses speak to the main fact charged in the indictment, and make their testimony verge to the same point, the line of defence is obvious; but when a complexity of different facts are deposed to, of which the prisoner has no intimation on his arraignment, and cannot possibly foresee as matter likely to be adduced on the trial, he cannot be prepared with witnesses to disprove, or arguments to explain them. Still worse! This advantage will press chiefly, or altogether on the innocent; for the man who is really guilty, knowing the nature of the crime, with all its dependent circumstances, will anticipate the proofs to come against him, and be either prepared to combat the facts by perjury, or explain them away by false suggestions. Surely, then, it is incumbent on the Court to be most assiduous in the protection of innocence by that penetrating caution, which is in this kind of evidence, almost its only security. Mr. Donnellan had one advantage in this respect above many others in the same predicament, by being present when the different witnesses were examined before the Coroner on the inquest, and by that means being acquainted with their several depositions; and yet, in some measure, he felt the inconvenience here described, as witnesses were called at the trial, who were not examined on the former occasion, and some of those whose depositions were taken then, chose afterwards to enlarge their testimony very widely: On this account the brief could not contain an answer to all the prosecutor's evidence; however, as the learned Council for the prisoner thought best to suppress most of the instructions actually given, there perhaps was no inconvenience in their not being more extensive.

I cannot conclude these general remarks without endeavouring to shew more forcibly the extreme danger and inhumanity of convicting rashly upon evidence, which is merely circumstantial; for this, as *before* ~~an~~ observation, is a subject, on which not only Mr. Donnellan's character, but the safety of every man much depends.

The inexperienced and superficial reasoner, eagerly receives for true, what wears the face of probability, especially when the circumstances leading to conviction, have any thing striking in their nature, or means of detection; and when it requires a greater expansion of judgment to reject, than to receive the inference that is pressed upon him; but the man who reasons justly, will not make so cheap a surrender of his conviction; he will pierce deeper ^{than} the mere surface of the evidence, will compare facts with each other, and not give his assent 'till the inferences, on which he forms his opinion, are examined by the rules of his own reason. I fear, however, that men of this description as well as the former, if unused to judicial proceedings, are sometimes too ready to measure the proofs, which are to affect the life of a prisoner, by the same rules which they would apply to a question abstract, and unimportant; that is, when the whole evidence is properly digested and compared. on which ever side the scale of probability seems to preponderate, they will give their verdict. This is not the proper standard of enquiry in criminal cases; for mercy should always throw a large weight upon the balance, and not desist from interference, 'till probability has grown into apparent demonstration; but where judgment is nearly on the poise, we should never pronounce on the side of severity. Had such humane principles always been adhered to, the sword of the law had not so often blushed with the blood of innocence, in this country as history informs us it has done.

But why need I resort to instances, when the recollection of every man will furnish innumerable ones, within the sphere of his own experience, and recollection; not perhaps where the consequences of rash judgment have been fatal, but where false conclusions have been formed upon circumstantial evidence, full as striking and convincing, as in any cases upon record. Who was ever long conversant with human affairs, without being often witness to the most perplexing combination of incidents, which have led into opinions quite opposite to truth, and have been afterwards explained by the simplest causes imaginable? Who does not remember surmises, and suspicions, he has himself entertained, from a variety of observations, accidentally presenting themselves together to his fancy, which have left him no doubt for a time, but that his conjectures were as infallibly true as the confirmation of his senses could have made them; but the next hour perhaps has exposed the fallacy of appearances, and without exploding one of the facts he built upon, the inference he drew from the whole has turned out entirely chimerical? Who has not himself been often the innocent victim of suspicion, and found circumstantial proof so hard to repel, that he was obliged to labour under imputation till time had done him justice? But it would be endless to urge arguments to this effect, and is quite superfluous; for that he who judges from appearances, however specious, must often be deceived, is a truth as evident by the light of reason, as experience.

Mr. Howarth laid it down to the Jury in his opening, that circumstances sometimes are as conclusive proofs as a hundred witnesses testifying the actual commission of the crime. This is an opinion, which, with all deference to the learned Gentleman, I must presume to controvert; circumstantial evidence I will be bold to assert, can at best, no more compare with positive, than conjecture with certainty, or the inference of argument with the testimony of our senses; for what are circumstances, ~~in evidence~~, but probable *at best* grounds for believing what cannot be directly proved? consequently a resort to that mode of conviction, is in itself a proof of weakness. The strongest body of circumstantial evidence that can be adduced, must be indebted to our reasoning powers for connection and inference; but direct deposition to the fact sets argument out of the question. We can in this case only hesitate about the credibility of the witness; whereas in that we may be deceived, both by perjury and false reasoning.——Has Nature afforded a more infallible chain of argument to mankind, than that which leads to the existence of a Deity? Yet the direct evidence of revelation was necessary to supply the defects of human reason; but if the completest body of circumstantial proofs in the universe is equal to direct evidence, the heathen world has to-day as strong arguments of faith in this point as the christian.

I shall

I shall here dismiss this subject, with regret that my abilities are unequal to the task of doing it justice; my design extended no farther than to throw out a few hints which might serve to caution the reader against those impressions he may already have imbibed from circumstantial proofs, and enable him to form a right judgment of the following defence. I shall now proceed to the evidence adduced against Mr. Donnellan; and that its refutation may be the more compleat, shall comment upon it in the same order in which it was adduced on the trial.

COMMENTS ON THE EVIDENCE.

The first witness called by the prosecutors council, was Mr. Powell, apothecary, of Rugby, who spoke to the state of Sir Theodosius's health, the medicines he had been taking, and some circumstances on the morning of his death. The first matter deposed by this gentleman, worth a comment, is the following: "That Sir Theodosius had employed him as his apothecary *for two months* before his death." This does not correspond with the authenticated case left by Mr. Donnellan; for by that it appears that Mr. Powell was first applied to in the month of June; a point, not wholly immaterial to the case, as it will hereafter be an enquiry, what state of health the young Baronet possessed at that period; and there were interrogatories in the proof part of the brief, directed both to Lady Boughton and Mr. Powell for ascertaining that he was first employed in June, whereas by his own account, it must have been in the beginning of July, as Sir Theodosius died on the 30th of August. But to put this matter beyond the possibility of a doubt, and to prove undeniably, how very incorrect the memory of this witness must have been, there is a letter of his, now in possession of Mess. Inge and Webb, addressed to Mr. Donnellan, and dated *June the Thirteenth*, in the following words, viz. "Sir, Please to inform Sir T. Boughton, that I mean he should take the *bolus* over night, the *purge* the next morning, and the *apozem* the same morning:" This letter was ready to have been produced on the trial, had the Council thought it material.

In answer to a question from Mr. Howarth, "What state of health was Sir Theodosius in when you first attended him?" Mr. Powell says, "He had got a venereal complaint upon him." This hardly appears a direct and compleat solution of Mr. Howarth's question; for exclusive of the venereal complaint, which the witness immediately after defines to have been a slight one, his state of health might have been very bad, and so in fact it was, if any credit may be given to the authenticated case, or the conclusive evidence on this subject, which the Council were directed to produce; or if any inference may be drawn from the nature of the medicines, which by the above letter it appears were at that time prescribed. But I will not enlarge further on this point here, as it will be necessary, when we come to the next witness, to examine it with more accuracy; suffice it at present, that the learned Counsel accepted this imperfect answer from the witness, satisfied, no doubt, that Mr. Powell could say more on that subject, not much in favour of the prosecution, as had Mr. Newnham urged him to it on his cross-examination, he certainly would.

The next question to this witness was, "Did you give him any medicine for that complaint?"—And what was Mr. Powell's answer? Of a nature perfectly congenial to the preceding one, for he only says, "I gave some cooling physic." The learned Counsel did not proceed to ask, Was that the only medicine you gave? but left it indefinite, so that the Court might draw an inference which I am sure the reader will think a natural one, that the *cooling physic* was the only medicine at that time administered by Mr. Powell. But how can the witness stand excused, if aware, as every body else was, of the effect which this ambiguous language produced, for not explaining himself more fully, and declaring the whole truth, when the fact was that he prescribed for Sir Theodosius, on that occasion, several *bolusses* of *calomel*? This I can confidently aver for truth, not only from the tenour of the letter before-mentioned, but as I am authorized to say, from the Solicitor's publications, that Mr. Powell himself gave the information to Mr. Webb, and acknowledged besides, that *eight grains* of calomel were contained in each *bolus*. He was subpoena'd to prove this fact, and several others of importance, which I shall introduce hereafter; but the prisoner's Counsel thought it unnecessary to call him, or cross examine him as to these points. The reader will immediately observe how very well calculated the two ambiguous answers here given were

to support each other. Mr. Powell having mentioned no complaint of his patient's but a *slight infection*, thought it would be inconsistent, no doubt, to mention any medicine but *cooling physic*; *calomel*, he was aware, was rather a harsh prescription in such a case, and I have too good an opinion of Mr. Powell's medical skill to believe he would have prescribed it. But Sir Theodosius had a more serious complaint, which cooling physic could not eradicate, and to which *calomel bolusses* were applied, I have no doubt, with propriety.

This witness goes on to state, that he continued giving the medicines for about three weeks; that he then ceased doing so for a fortnight, but repeated them afterwards, because a swelling appeared in the groin; that he then prescribed manna, rhubarb, &c. And being asked whether any thing else was given to Sir Theodosius, he answers, "Nothing else, but an *embrocation* to wash himself with."

As Mr. Powell was not cross questioned to make him discover what he meant by *embrocation*, or what it was composed of, the Court was in possession of the term without the sense; for it could hardly be conjectured that he intended thereby *nothing less* than a repellant composed of *strong Goulard or tincture of lead*; which fact Mr. Webb had from the lips of the witness. Every one knows that repellants are dangerous medicines, and it might perhaps have been candid in Mr. Powell therefore to have conveyed his meaning in some word more descriptive of it than *embrocation*.

This was another point stated in the proofs, and another which the Council thought proper not to mention.

There was likewise another matter stated in the proofs, as mentioned by Mr. Powell to Mr. Webb, which the Council did not think proper to take notice of, which was, that when Sir Theodosius applied to Mr. Powell the second time, and shewed him the swelling in his groin; he Sir Theodosius on Mr. Powell's observing a blackness about it, said the same was owing to his having applied mercurial ointment to it, and acknowledged that he had done the same frequently on former occasions. — This undoubtedly would have been material had it been proved, because it would have shewn that he had been troubled with a buboe, prior to that which Mr. Powell mentioned, and tended to have strengthened other parts of Mr. Donnellan's case, particularly where it is ^{stated} that Sir Theodosius used mercury, as well while he was at Mr. Jones's as afterwards.

The next passage in Mr. Powell's testimony that clashes with the Case of Mr. Donnellan, is that wherein he states that Sir Theodosius was in good health and spirits for a few days immediately preceding his death. As we shall be able, in the course of these comments, to prove that the unfortunate Baronet was reduced almost to a skeleton, before he came under the care of Mr. Powell, it will hardly be thought probable that his health should be so good, as here represented, at the period in question. for we believe *calomel bolusses*, strong repellant washes, and even cooling physic, frequently administered, are not very likely means to restore a reduced constitution; but it is positively stated in the case of Mr. Donnellan, that Sir Theodosius was in the most wretched state both of health and spirits, within a few days of his death, inasmuch, that on the Sunday immediately preceding that event, he wept bitterly before his mother, complaining of the wretched state to which he was reduced, and making resolutions of amending his life, if he could get the better of his complaints. Lady Boughton was to have proved this circumstance, but like the rest, it was never enquired into. Mr. Powell also himself, strange as it may appear, was depended on as an evidence to the reduced state of his patient a little before his death; nor was this dependance without reason, as the reader will be convinced, when he reads the following expressions which Mr. Webb reduced into writing, from the lips of this gentleman, when he served him with the subpœne, and which were mentioned in the proofs, viz. "That Sir Theodosius was very irregular a little before his death, grew very weak, and looked very thin and poorly, and that he believed his constitution was very much broke down."

Mr. Powell afterwards informed the court "that the medicine he sent Sir Theodosius on the Saturday preceding his death having made him sick, he had changed the ingredients of the next mixture, to obviate that effect, and that the medicine given on the Monday produced no sickness. — On this

this head we shall only observe, that if the draught given on Monday caused no sickness, it is strange enough that Mr. Powell should have expected that effect from the one sent the next day, composed, as he swears, of the same ingredients. Now, William Frost, coachman to Lady Boughton, communicated a matter, which, if true, proves that Mr. Powell actually expected such an operation from the second draught. This man was the messenger dispatched to Rugby when Sir Theodosius was dying; and he states, that on his return with Mr. Powell towards Lawford-hall, that Gentleman professed to have had an expectation of his patient's being sick by the medicine he had sent. This it was believed Wm. Frost would have sworn on a cross-examination; but the Prisoner's Counsel did not think fit to examine him at all.

It was insisted upon by Mr. Howarth in his opening, as a most material fact against Mr. Donnellan, that he asked no questions of Mr. Powell concerning the medicines, on his arrival at Lawford-hall, upon the morning that Sir Theodosius died; and the witness readily furnishes fact for this argument, by saying, "Mr. Donnellan asked him no questions at all." He seemed quite willing to stop, having said thus much, and the Court would, in consequence, have been impressed with an opinion, that the prisoner and he had looked at the body together for a considerable time, without a syllable of conversation concerning the manner of his patient's death, though it afterwards appeared from his evidence, that they were not many minutes in the room together. It also appears, that Captain Donnellan informed him the Baronet died in convulsions, and without recollecting any particular words, he says, "that the general intent of the prisoner was to make him believe Sir Theodosius had taken cold." Previous to all this he had been asked if Lady Boughton was in the room? and his answer was, "Not when I first came." Thus far says Mr. Powell on his first examination, but being cross examined by Mr. Newnham, some additional information is given about this conference in the bed-chamber, which we shall recite verbatim from the trial:

Q. You say that Mr. Donnellan told you, that Sir Theodosius died of convulsions, and that was all the conversation about it?

A. Yes.

Q. Did it not occur to you, as a physical man, to enquire when these convulsions commenced, and when Sir Theodosius died?

A. The convulsions took place soon after the draught was taken.

Q. What idea have you of *soon*?

A. A quarter of an hour or sooner.

Q. Do you know for certain?

A. I do not.

Q. Why did you not enquire?

A. I did enquire.

Q. You saw Lady Boughton?

A. Yes.

Q. Had you no conversation with her?

A. Yes—she said he was convulsed soon after he took the medicine.

Q. Did not you enquire how soon?

A. He was convulsed almost immediately.

Now let us examine a little the grounds of this formidable inference, which Mr. Howarth said should alone decide on the fate of the prisoner. Mr. Powell confesses that Mr. Donnellan and he were not together many minutes, which is perfectly consistent with the Case, as it is stated there, that the whole time of his stay in the house was not ten minutes. Now, with him and the prisoner in the bedchamber, he acknowledges there was present a servant the whole time, and that Lady Boughton came to them there. When she came is not specified, but it may be easily gathered, that she followed them almost immediately into the room; for, on his cross examination, he confesses a series of enquiries between himself and her Ladyship, which, considering the solemnity of the occasion and subject, could not engross much less than the whole time he staid there. It is consequently a natural idea that her

Ladyship engaged the whole of the conversation while she staid, and that Mr. Donnellan had only time enough before she came in to say just what the witness has stated. Can any thing be more simple than this, or where is the ground for suspicion? Surely Lady Boughton was the most proper person to interrogate the apothecary, or to answer his enquiries, for she gave the medicine, she saw its operation, and the symptoms of the patient, but Captain Donnellan knew nothing of the affair, except what her Ladyship had communicated. Had he interfered in their discourse, and taken the charge of enquiring on himself, we conceive, in that case, the presumption would have been stronger against him than in the other, for he might have given a false account to Mr. Powell, and thereby prevented those enquiries, which, for his own reputation's sake, it was to be expected he would make. It was not Mr. Donnellan who had entertained any suspicion of the medicine, but Lady Boughton; she, then of the two, was the person to make enquiries, and especially as it was administered by herself; but we must still contend, that it was more the province of Mr. Powell to do so than either of the other parties, for what is the information he receives? he learns, "that Sir Theodosius was convulsed almost immediately after taking the medicine, and that these convulsions ended in his death;" now we cannot see how even the direct imputation of poison being in the phial could afford a stronger reason for his demanding to see it. Was not this imputation, in fact, conveyed? or how could it, consistent with delicacy, be couched in more pointed terms?—"He died immediately after taking the draught." Surely then that the draught occasioned his death was an inference, which, if fair, was at least as obvious to Mr. Powell as either Mr. Donnellan or Lady Boughton! and if his imagination could not reach to it they could not assist his reasoning powers, without directly charging him with sending poison to his patient, which, except on the strongest conviction, it is natural they should both be reluctant to do. But it hardly requires argument to prove, that Lady Boughton must have, to the satisfaction of her own feelings, suggested her doubts about the medicine on this interview; for why should she suppress them?—not out of tenderness to Mr. Donnellan surely; for no part of her conduct has betrayed any weakness of that kind; besides, had he prevailed on her to conceal her suspicions from the apothecary, the most obvious, easy, and delicate way of doing so, would have been for her not to be present; as the recent shocking event would have afforded a most plausible excuse for her absence. We think then it appears beyond the possibility of a cavil, that if any remissness was shewn on this occasion, it was by the apothecary; as to the other parties, they had been explicit, they had concealed nothing; and if a medical man thought their relation could die in the manner he did, without the agency of poison, they were satisfied. Let it not be objected to this, either in defence of Mr. Powell, or crimination of the unhappy gentleman who has suffered, that it was said the deceased died of convulsions. Mr. Donnellan might say so, it appears Lady Boughton actually did, and she told the truth; but whether those convulsions were the cause of death, or merely symptomatic, was a consideration, fit for Mr. Powell, not for them; and he, as a medical man, must know that such appearances were not inconsistent with the idea of the deceased having been poisoned; on the contrary, that every poison which could produce such instantaneous effects must necessarily convulse the body.

There only remains one thing more in this gentleman's testimony to be answered, and that is his assertion, that Mr. Donnellan wished to make him believe Sir Theodosius had taken cold. It is observable, that the witness cannot give the particular words here, and it is the only place in which he has any difficulty of that kind; consequently, we are to gather Mr. Donnellan's meaning, not from his own words, but from an arbitrary construction put upon them by the witness: ~~but the witness has not been able to give the words which Mr. Donnellan said, and which he is now endeavouring to explain.~~ nothing can be more unnatural than the idea of a man's leading an apothecary into the chamber of his deceased patient, and there beginning abruptly to explain to him the cause of his death, by means which, *prima facie* of all others, were the least likely to produce it. It is not at all improbable that the witness, considering the course of mercurial medicine the deceased had been upon, should ask if he had taken cold?—But we will form a supposition still more obvious than this, and say, that Mr. Powell asked generally, "Has Sir Theodosius been using any irregularity last night, or this morning? has he been in liquor?" And what could the other reply but this: "He was out till nine o'clock last night a fishing," which was the act. This, or any thing similar, taken for granted, the difficulty is solved at once; for the Doctor's ideas immediately fly to a sudden cold, as the only danger of being late by the water side; and as he
learned

learned this from Mr. Donnellan's information, it would be inconsistent with the general tenor of his evidence, not to say, "Mr. Donnellan's intent was to make me believe it." It will strike any reader at once how very fortunate this witness has been, through the whole of his evidence, in the choice of expressions; for here had he phrased it, "Mr. Donnellan said the deceased had taken cold," or "given me ground to suppose so," or "professed himself of that opinion," or, in short, had he adopted any mode of phraseology but this particular one, it would not have been worth while to dispute with him about it; but, says Mr. Powell, "*his general intent was to make me believe so*;" that is to say, in other words, "he wanted to impress an opinion on my mind, which he did not himself entertain."

We cannot take our leave of this gentleman without observing, that if he really had that fever of zeal against Mr. Donnellan, epidemic through the whole country, (to the contrary of which there is plainly no symptom in his testimony) it was but recently contracted, for he was foremost to congratulate him on the restoration of his character after the first inquest, declaring, "*that now suspicion must cease*, that he was present at the opening of the body, and would not for gold but it should have been done, as *nothing was more free from poison*." These, and other expressions which he used, will be found at large in the Case*.

Let the reader now look back through the whole of this testimony, and seeing it, as we hope it has been proved to be, in some cases contrary to fact, in some partial and evasive, in others wilfully ambiguous, and in all severe; ask his own heart what weight it should have had against the life of the prisoner. From it, the whole chain of circumstances proved on this trial take their origin and force, for if the exact contents of the phial sent by Mr. Powell had not been positively sworn to, we apprehend nothing else would have been thought material.

Let us now proceed to the next witness, *Lady Anna Maria Boughton*, whose testimony is by far more material, and opens a wider field of discussion than any of the rest; we must therefore entreat the patience of the reader will go along with us, in giving it the most minute consideration.

Her Ladyship was first questioned on the subject of her son's time of life, and the fortune to which he would have acceded when he came of age. She swears that "he was twenty years old the 3d of August last, and that when he reached the age of twenty-one, he would have been entitled to an estate of 2000l. a year; but in the event of his dying under age, the greater part of this estate descended to his sister, who married Mr. Donnellan." These facts were deposed to, in order to support one strong ground of suspicion against the prisoner—his having an interest in the death of Sir Theodosius Boughton. We will venture to assert, that among all the circumstances of this case, however conclusive they may have appeared against the prisoner, not one has operated so strongly in the minds of the jury and the public, as this, though it is founded altogether in mistake: We hope, therefore, that a complete refutation of it will remove a great weight of prejudice, and prepare the reader to decide upon the evidence with more impartiality. The facts relative to this point, stated in Mr. Donnellan's Case, which are too well known to many, who have an interest in denying them, to be imposed on the public, if untrue, are the following:—

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When Mr. Donellan married into the Boughton family, he executed a deed of settlement, whereby he not only precluded himself from any interest in his wife's fortune then in possession, which was 3000*l.* but also in all property whatever, real or personal, that might afterwards fall to her by *descent, gift, devise, or otherwise*; and besides this, he even relinquished what is almost invariably in all cases the right of the husband, a life estate in his wife's fortune after her decease. The terms of this settlement alone would go near wiping away the imputation against which we now contend; for it appears that Mr. Donellan could derive no benefit from the descent of the fortune, except during the life of his wife, and even then subject to her discretion. Now that ambition, which will lead a man to perpetrate enormous crimes for its gratification, seldom stoops at an object so low as a mere extension of an annual income, which cannot, while it lasts, afford the means of splendour and independence, and when it fails, leaves him entirely indigent. But surely every trace of suspicion on this ground will be perfectly obliterated, when we shew that instead of a very precarious and temporary interest which Mr. Donellan had to expect by the death of his brother-in-law, by his life he would have attained a lasting and independent fortune. This was precisely the truth, for it is known not only to the Boughton family, but all their connections, that Mr. Donellan meant to enter into orders, that he had been qualifying himself for an ordination two years before these melancholy events, and that Sir Theodosius had engaged to present him to two livings, worth together about five hundred pounds a-year. One of these presentations, that to the living of Great Harborough, was to take place immediately on the young Baronet's being of age, and the Rev. Mr. Newsam, the present incumbent, had given a bond to Lady Boughton in the penalty of 5000*l.* to resign at that period. The other living was that of Newbold upon Avon, and was not to become vacant till the death of the incumbent; but he was aged upwards of seventy, and very infirm. So that Mr. Donellan, in all probability, would in less than a year, had his brother-in-law been living, acceded to an estate for life of 500*l.* per annum, in lieu of that precarious interest in his wife's fortune, which he could not controul during her life, and after her death must for ever relinquish.

The next point in Lady's Boughton's testimony, which was construed against the prisoner, is this, his having represented to her before the death of Sir Theodosius, that he was in an ill state of health, particularly the following passage, which we must beg leave to transcribe from the printed trial.

Q. What were the expressions used by him (Mr. Donellan) when he talked upon the bad health of your son?

A. "He said, don't talk of leaving Lawford Hall, something or other may happen, he is in a very bad state of health, you cannot tell what may happen before that time. *I thought he meant his being so very venturesome in going a hunting, and the like.*"

"We have observed already in commenting on Mr. Powell's evidence, that it is unfair to take as undeniably true, the general ideas of a witness gathered in the course of conversation, which is not given in detail; but to receive in proof, broken, incoherent, and random expressions, is still more improper, for the true meaning in most cases can only be discovered by the connection. However, recourse need not be had to abstract arguments in this instance, for the purpose of shewing that the prisoner's language does not admit of that interpretation, which its obvious meaning might first convey to us, for the witness herself accepts it in a sense, no doubt impressed upon her by the words when spoken, quite different from the natural construction--"I thought, says she, he meant his being so venturesome in going a hunting, and the like:" but what had this to do with his being in a very bad state of health? It is obvious that the whole conversation is not given, nor even the general scope of it, or the witness could never have put such an interpretation on Mr. Donellan's language. It seems to us, that were these expressions circumstantially related, they would have an effect quite opposite to that intended by the counsel for the prosecution; for if Mr. Donellan said, "don't leave Lawford Hall, you don't know what may happen," in relation to Sir Theodosius's going a hunting, it surely was a very friendly precaution in favour of her son, and evinced a desire of preserving him from danger, by the presence and authority of his parent.

Let

Let it not be supposed from this way of reasoning that there is not another and a sufficient defence for any representations Mr. Donellan might have made concerning the health of his brother-in-law; I would wish that the evidence should have no larger share of credit than truth will warrant, but as to the point now in question, should have no objection to admit every thing that was deposed on the trial, without fear of prejudice to the cause I am defending. If Mr. Donellan really said that Sir Theodosius was in a bad state of health, he was sufficiently warranted in saying so, as will partly appear from what has been already offered on that subject, and still more from the following facts.—When the young Baronet was at Eaton school, he was thrown into a deep salivation for the cure of a certain disorder; and at the time Lady Boughton took him from that place, he was so much disordered that she was obliged to place him under the care of a medical gentleman at Rugby. In several letters addressed to her daughter and son-in-law, who were then at Bath, during the years 1777 and 1778, she complained of her sons irregularities, adding, “*that blotches appeared upon his face, that he had lost his fine complexion, and was then taking medicines for his complaint.*”—These accounts Mr. Donellan found too well verified on his return to Lawford Hall in June 1778, Sir Theodosius then confessed to him, that he had never been cured of the distemper contracted at Eaton, but had been continually using mercurial ointment. From that period till the month of June 1780, he was frequently in the use of quack medicines, and run through such a course of intemperance that he had nearly destroyed his constitution, and rendered himself a mere skeleton.—All these facts are stated in the case of Mr. Donellan, solemnly attested by him immediately before his death; they are also inserted in the proofs intended to support that case, and in all probability would have been confirmed by the testimony of Lady Boughton, Mr. Powell, and other witnesses; some of them were actually proved on the trial by her ladyship.—From the month of June to the time of his death, this unfortunate young Baronet continued under the hands of Mr. Powell, and if to the above particulars are added those introduced in the comments on that gentleman’s evidence, it will appear, that from the age of sixteen till the time of his decease, he was perpetually subject to disease, and under medicinal courses. Can any falsehood then be imputed to Mr. Donellan in asserting, that he was in a bad state of health?

To return to Lady Boughton’s evidence—she was questioned by Mr. Howarth concerning the time which her son proposed to spend with Mr. Fonnerneau, and said in answer, that this gentleman was to stay a week with her son at Lawford Hall, then the visit was to be returned by Sir Theodosius; but how long he proposed to stay with his friend he had not informed her.—The learned gentleman in his opening, had adopted a report spread abroad in the country, like many others, without the least foundation, that Sir Theodosius intended to stay with Mr. Fonnerneau till he came of age; and the inference drawn from this was, that the intervening time was the only opportunity left for Mr. Donellan to perpetrate the crime which he was supposed to have projected long before. To corroborate this report, it was universally said and believed, that Sir Theodosius wanted but a few weeks to be of age; but the evidence of Lady Boughton here disproves both those reports; for, she says her son was only aged twenty the month that he died, and the time of his proposed stay with Mr. Fonnerneau had not been mentioned.—Surely it cannot be supposed, that he was going to repay the visit of a week by staying eleven months, and that without any intimation of it to his family.

Her Ladyship next proceeds to the circumstances relative to the phial, and as a preliminary ground of suspicion against Mr. Donellan, says, “that her son used to put his physic in his dressing room, that he happened once to forget to take it, that Mr. Donellan said thereupon, why don’t you set it in your outer-room, then you would not so soon forget it—that this advice was followed, and he had several phials after that upon his shelf over his chimney-piece in his outer-room.”—We should have been unable to conjecture why this circumstance was proved, or what inference was intended to be drawn from it, had not the learned counsel for the prisoner taken care to get from her ladyship, on her cross examination, that the closet was usually kept locked: and we are left to imagine from thence, that the outer room was usually open; that the suspicion taken from this circumstance arises merely by too superficial a view of it; for surely there could have been no difficulty for Mr. Donellan, living, as he did, two years in the family, to procure a key of the closet, and then, because the substitution of the poison for the medicine would have been a work of more apparent difficulty, his guilt would have been proportionally more secure from detection; besides, her ladyship only states, that the closet was for the most part locked, clearly then it was not always so, and Mr. Donellan might have had many opportunities to execute his purpose, without laying himself open to suspicion by this advice; it was also most prudent to place the poison, if possible, in

an interior room, because there it was least liable to observation. But to show how industriously every circumstance has been sought after which was thought likely to operate against this unhappy gentleman, without any respect to candour or justice, I will state his own account of this incident from the attested case. He there admits the truth of what Lady Boughton alludes to, but with this explanation, "that Sir Theodosius being used to amuse himself with mixing poisons for destroying rats, and for various other purposes, and happening to say once, when Lady Boughton was present, that he was near taking a bottle of poison instead of his physic, he (Mr. Donellan) advised him, in the most friendly manner, for the future, to keep his poisons separate from his physic, by putting one of them in the bed-room, and the other in the room adjoining, by which means he would not be liable to such mistakes in future."

If this is the true state of the fact, it is one instance in addition to the many which were proved on the trial, of Mr. Donellan's having preserved the life of his brother-in-law; and nothing could be more ungenerous than the attempt to turn it against him:

The next point in Lady Boughton's testimony is to prove the possibility of Mr. Donellan's changing the contents of the phial on Tuesday the 29th of August, in order to which she describes the distribution of the family, and her own employments through the evening. Her account of these is so diametrically opposite to that given by Mr. Donellan, which I am assured, by Mr. Webb, he could have supported by unexceptionable evidence on the trial, that no conjecture can reconcile them: I will therefore singly state them both, and beg the reader to suspend his opinion till he is enabled by what ensues to form a better judgment of this lady's evidence.—Before, however, I go any further, it may be proper to point out one circumstance in the very commencement of her relation, which is directly contradicted by the evidence afterwards called on the part of the prosecution; this, though not essential to the main question in controversy, may serve to give an idea of the cautious manner in which she delivered the testimony which was to affect the life of her son-in-law.—Here I copy from the printed trial.

Q. After he (Sir Theodosius) had gone out a fishing, what men-servants were left behind in the family?

A. The gardener, the coachman, and John the footman.

Q. Were either of the men-servants with Sir Theodosius a fishing?

A. Yes; Samuel Frost was the only one.

Now Francis Amos, the gardener, afterwards swore, that he was with Sir Theodosius the whole time of his fishing—and Samuel Frost that he did not go to him till seven o'clock.

In addition to these, her ladyship gives the following particulars.

"That her son went a fishing in the afternoon about six o'clock; that she did not see him within a short time before he went.—That her ladyship went with Mrs. Donellan to walk in the garden, and they walked there above an hour; to the best of her remembrance she had seen nothing of Mr. Donellan after dinner, but he came to them in the garden out of the house-door about seven o'clock, and told her that "*he had been to see them a fishing, and that he would have persuaded Sir Theodosius to come in lest he should take cold; but he would not.*" That Sir Theodosius came in about nine o'clock, and soon after went up to his own room."

Now let this account be compared with that which I shall extract from the printed case: according to that, Mr. Donellan was walking with his child in a field adjoining the house, from about four till five o'clock, when coming toward the house he turned into the front garden, where he had not been many minutes before he observed Lady Boughton coming towards him from the house with a basket in her hand; her Ladyship called to him, and desired he would go, and assist her in gathering some fruit. He accordingly went, and while they were gathering the same, they saw Sir Theodosius ride by the wall of the garden, whom they asked where he was going? and he answered, a-fishing.—Some of the fruit being out of Mr. Donellan's reach, her Ladyship desired him to go and call Sam Frost, the servant boy before mentioned, to bring a ladder: Mr. Donellan accordingly went into the house, and called, "Sam" several times. On hearing no answer, he went into the kitchen, where he found three servant maids, Sarah Blundell, Susannah Sparrow, and Catharine Amos, washing. He enquired of them where Samuel was, and on their saying, "they did not know," he desired them "to send him into the garden with a ladder as soon as they should see him." Mr. Donellan then returned directly to her Ladyship, not having been absent from her more than three minutes. Soon after his return, Samuel Frost appeared in the garden with a ladder, and while they were gathering the fruit there, Sarah Blundell came to tell her Ladyship, "that a Mr. Dand, and one Matthews a carpenter, wanted her;" upon this her Ladyship went towards the house, and Mr. Donellan with her, it being then about six o'clock. When they arrived in the hall they found Dand and Matthews there, and talked to them

them about ten minutes, during which time Mr. Donellan never left the room; but when they (Dand and Matthews) went out at the door which leads into the inner court-yard, he returned at the same minute into the garden. There are large iron gates which open from the garden into the dial court-yard, and just as Mr. Donellan had reached those gates, he observed Dand and Matthews pass along the yard towards the stable, when recollecting, that he had something more to converse about with these people, he opened the iron gate, and called them to him. Their conversation together continued some time, and then Mr. Dand going away, Mr. Donellan walked with Matthews to Hewitt's mill, which stands at a small distance from Lawford Hall, to look at the alterations then making there; after which they walked up the river to view the state of the flood-gates, and continued to walk there some time. At length Mr. Donellan observing, that the dew fell heavy, and Matthews looking at his watch, and saying, it was past nine o'clock, they parted, Matthews going to Longlawford, while Mr. Donellan returned to Lawford Hall by the same way that he went; viz. through the iron-gates beforementioned into the garden, and from thence through the hall and passage into the parlour, where he found Lady Boughton, whom he saw at the parlour window as he passed through the garden: her Ladyship then also saw him, and knew that he was with her in the parlour within less time than one minute after he passed the window.

The case goes on to relate, that on Mr. Donellan's entering the parlour, Lady Boughton enquired, "if he had seen Sir Theodosius, or knew where he was"? he answered, that "he had not seen or heard any thing of him;" on which her Ladyship said, "that he was out a fishing," and added, that she was very angry at him for staying out so late, for that she must be obliged thereby to light candles.—Soon after this Mr. Donellan went up to bed, not having quitted the parlour in the mean time, and Mrs. Donellan followed him in five minutes. At this time Sir Theodosius was not returned.—Mr. Donellan's bed-chamber was directly over the parlour in which her Ladyship was then sitting, and the staircase, conducting to it adjoins to the door of the said parlour, which was open the whole evening: Sir Theodosius's room was on the other side of the house, upwards of eighty yards distant, and led to by another staircase, nor had it any nearer communication with Mr. Donellan's bed-chamber: thus to pass from one of these rooms to the other, there was a necessity of going by the door of that parlour in which her Ladyship was sitting, and crossing the whole house."

Here we have a relation circumstantial and consistent with itself, solemnly attested by Mr. Donellan in his last moments; to support part of which on the trial, Dand and Matthews were subpoenaed*, and the cross-examination of the witness for the crown, was to establish the remainder. But Mr. Newnham, it seems, would not believe it possible, to prove the whole, and therefore did not attempt it. The learned Counsel, no doubt, had very cogent reasons for his conduct; but that the proof of all these facts would have amounted to a complete defence, is obvious; for it was proved by the crown evidence, that the medicine sent by Mr. Powell was delivered to Sir Theodosius between five and six o'clock; allowing, therefore, that it was deposited in his bed-chamber immediately, which, as he received it below, and was on the point of going out, is very improbable; it is shewn, that Mr. Donellan was not near the place after five o'clock, consequently could not remove the phial, and substitute one with poison in its stead. Let me remark here, however, that the *onus probandi* did not lie on the prisoner, but the prosecutor; the counsel for the crown were obliged to shew the possibility of that substitution supposed in the indictment; and that Mr. Donellan should be able to meet them on this preliminary ground, by accounting for every moment of his time amidst the desultory engagements of a summer's evening in the country, is very remarkable. The learned Judge, in summing up the evidence, observed, "That there is a fatality which attends guilt. I will not follow even such great authority in a superstitious line of reasoning, or might observe, "That there is also a Providence visibly protecting innocence, which might have furnished Mr. Donellan with those weapons of defence, though human wisdom was too sublime to use them."

But let us return to Lady Boughton's testimony; for it must be admitted, that if her memory was correct, the fact stated in the case of the prisoner could not be true. I have already observed, that the contrarieties in her account are too glaring to be reconciled by any rational conjecture, and that the reader would do well to suspend his judgement till we have gone through all our comments on her evidence: but in the mean time, I must offer an observation or two on her story, to shew how well it is supported by probability.

The witness swears positively, that her son went a fishing about six o'clock, yet admits that she had not seen him shortly before he went out. By what means then she knew the exact time of his going, or, indeed,

that

* I am authorized by Mr. Webb to say, that Mr. Dand and Matthews confirmed these particulars to him, and would have given them in evidence—so that her ladyship's story might have been fully contradicted by calling these witnesses.

that he was gone at all, as the question was not asked, does not appear from her evidence : she might have it from hearsay ; but how she could swear to it of her own knowledge, cannot be conjectured, without admitting that very easy solution of it, in Mr. Donellan's Case, " that she saw him ride by the garden wall." Her ladyship immediately after this, states what men servants were left behind in the family, after her son went a fishing, and herein, as I have observed already, is flatly contradicted by one of the witnesses called on the part of the prosecution. Mr. Donellan, she afterwards says, came to her in the garden, about seven o'clock, and then it is he informs her, that " he has been to see them a fishing, &c." which was thought a most material circumstance against him. This fact rests entirely on her ladyship's evidence, and when her extreme incorrectness is considered, it is not difficult to believe, that she either misunderstood, or imperfectly recollected, his meaning ; but of this, I repeat again, the reader will be better qualified to judge in the sequel. It must be observed, that the sense of the words seems a little to clash with her ladyship's former account. " I have been to see *them* a fishing ;" a very abrupt address this to her, if there had not been some mutual knowledge between them that Sir Theodosius was gone out on that amusement ; yet, by her ladyship's own account, she had not seen Mr. Donellan since dinner. But if it was actually Mr. Donellan's purpose to account for his absence by falsehood, what must we think of his understanding, to believe he would invent a story that all the servants attending the young Baronet could contradict, when many, as plausible and satisfactory, might have been adopted, without danger of detection ? Indeed, through the whole transaction, he must have been the weakest of mankind, if her ladyship's account is to be credited in every particular ; and if he actually altered the draught that evening, for if his absence was likely to create suspicion, why was he absent so long ? Her ladyship says, she had not seen him since dinner, and her son went out at six o'clock, yet he does not show himself till seven : did it then require an hour to walk across the house and change the contents of the phial ? Surely the more expeditiously it was done, the safer, and it would have been in Mr. Donellan's power easily to complete his purpose, before his absence could be perceived : nor can this incautious behaviour be attributed to inadvertency, at least not by those who credit the whole of lady Boughton's account ; for it appears from thence that he was thoroughly aware of the course suspicion would take, and yet chose rather to elude it by the most puerile falsehood, than prevent it by dispatch. After all, it is singular enough, that the prosecution could not profit by her ladyship's evidence in one part, without refuting it in another ; and that Mr. Donellan might have safely admitted this circumstance, had her story been supported throughout ; for, according to her ladyship, nobody but Samuel Frost was with her son a fishing ; and he, in his evidence, says that he did not go till *seven o'clock* ; now by *seven*, Mr. Donellan was with her ladyship in the garden ; therefore, for all that Frost, or any body else, can prove to the contrary, he might have been with the young Baronet before that hour. But the gardener, who, according to this witness, was at home, is the person afterwards called to prove that he did not see Mr. Donellan at the river ; so that in this circumstance adduced against the prisoner, his assertion was proved by the most incorrect and inconsistent evidence that can be imagined, and its falsehood, by proving that evidence, still more incredible.

I now hasten to the most material part of Lady Boughton's testimony, but cannot omit pointing out, in my way, one more contradiction. Her ladyship states, that " as she was going up stairs on the Tuesday night, her son called her into his room, and desired her permission to make use of her servant, to go the next morning with the net, *as he expected his friend, Mr. Fonnereau, to come.*" In the former part of her evidence, she says, " he expected Mr. Fonnereau to *come the latter end of that week.*" This may be worth observing, not only as a proof of the witness's incorrectness, but because some stress was laid in the trial, and still more in the opinion of the public, upon this expected visit, for it was supposed that Mr. Donellan could have no opportunity to perpetrate the murder with so much privacy after the Wednesday morning.

To what immediately ensues I beg the reader's particular attention, as it will in all probability go far in forming his opinion, not only on this single evidence, but the case at large ; we have seen already some proofs of inconsistency in Lady Boughton's testimony ; but we shall now see that the most important part of it is also the most questionable, and here there is a very satisfactory way of refuting her ; for to this part of the case she was examined twice before the coroner, and both accounts then given are as opposite to the last as they are to each other ; yet, as usual on those occasions, her evidence was first taken down in writing as she delivered it, then read over to, approved, and signed by herself ; every word therefore in them was the language of deliberation, and resulting from her first impressions on the subject ; and if they are inconsistent with her evidence on the trial, the former should be deemed the more authentic, except what I am the rather inclined to believe, the contradictions between them should be so glaring as to destroy the credibility of both.

Her

Her Ladyship says in court, that about seven o'clock in the morning of August the 30th, she went into the bed-room of her son, to give him his draught, which he pointed out to her upon the shelf, that as she was talking to him, she omitted shaking the bottle, and he observing that, said, "pour it back again and shake the bottle," that in so doing, she spilt some part of it on the table, and gave him the rest. This last circumstance does not exactly correspond with her first deposition before the Coroner, wherein she says, "That *she perceived* upon pouring it into a basin to give the deceased, a large quantity of powder or sediment, at the bottom of the phial." — On the trial, she forgot entirely the basin and the sediment, rather unfortunately for the prisoner, because, tho' the medicine sent by Mr. Powell being composed of jalap and rhubarb, must of course have had a large quantity of powder or sediment at the bottom, laurel-water, which Mr. Donellan is said to have substituted, could have had none at all; — but it must be observed, that ~~the~~ ^{at the time} of her Ladyship first examination ~~ation~~ ^{ation} ~~arsenick~~, and not laurel-water, was supposed to have been the poison; — now arsenick I believe would have had the appearance here described.

The next passage is a very material one, and directly inconsistent with the written deposition—"as he was taking it" says her Ladyship on the trial, "he observed it *smelt and tasted very nauseous*, upon which I said *I think it smells very strongly like bitter almonds*."—That smell it seems, peculiarly characterises laurel-water, and therefore scarce any circumstance deposed to by Lady Boughton, operated more strongly against the prisoner than this. — But let us see what were her ideas on the same subject, at the coroner's inquest: she there deposed expressly, "that the medicine had a *very offensive and nauseous smell*; that the deceased complained very much of its *nauseousness*, and thought he should not be able to keep it on his stomach." — Then there was no mention of any resemblance to *bitter almonds*, but something from her Ladyship's own observation, directly repugnant to that idea, for every one knows that they have a very grateful aromatic flavour, and the medicine, according to this her first account, had a very *nauseous offensive one*: — What, on the mildest constructions, is to be thought of an inconsistency like this? What but that a subsequent knowledge of laurel-water and its properties, when the medical gentlemen had changed their ground, implanted a prejudice in her Ladyship's mind, stronger than the impression first received by her own organs, and made her reconcile two of the most opposite ideas in nature, rather than dissent from the received opinion — nothing can better justify a rule laid down in the beginning, that circumstances discovered by the eye of suspicion should be most cautiously received.

The witness next described the manner in which her son was affected by the medicine: — The first effects she mentioned, were a rattling and gurgling in his stomach, and strong efforts apparently to keep it down; these symptoms abating, in about ten minutes, he appeared inclined to sleep, and her Ladyship left the room. — She acknowledged afterwards, upon her cross examination, that as she passed from her son's bed-chamber, by the window that looks into the court, she heard Mr. Donellan call out to her, "is your Ladyship ready to ride out?" To which she answered, "I shall be ready in about a quarter of an hour; I am going to put my things on:" Mr. Donellan then replied "he would go to the Wells. — She acknowledged too, that at that time she did not inform Mr. Donellan of her son's indisposition, in consequence of taking the draught. — But to resume the thread of her Ladyship's evidence, she states that, "in about *five minutes* she returned into her son's bed-chamber, and found him with his eyes fixed upwards, his teeth clenched, and froth running out from each corner of his mouth; that she thereupon ran down stairs, and told the servant to go immediately, on the first horse he could get, for Mr. Powell; but that *no other person was sent for*;" that she saw Mr. Donellan in less than five minutes after that; he came up and asked her "what do you want?" and that she said "she wanted to inform him what a terrible thing had happened."

Let us enquire a little in the first place, how far this story is consistent in itself, then compare it with her Ladyship's former depositions, and the testimony of other witnesses, called on the trial for the prosecution.

Mr. Donellan leaves her to go to the Wells, which are three quarters of a mile distant from Lawford Hall, and yet he comes back in less than ten minutes, without being sent for by her Ladyship, comes up stairs, and thus abruptly addresses her, "what do you want?" So unexpectedly presenting himself, and putting so strange a question, it is natural to suppose he would have been received with

astonishment, and the cause of his question demanded; but instead of these, she expresses no surprise, and gives an answer perfectly correspondent with the terms of his question, — “*I wanted to inform you what a terrible thing has happened.*” — *Wanted!* how inconsistent an expression to use, if he had appeared without being sent for. — But let us see how this matter was explained to the coroner. — In her Ladyship’s first deposition, taken September the 9th, she relates it in the following terms — “That John Donellan, Esq; this examinant’s son-in-law *being informed by her* of the situation the deceased was in *came up stairs to this examinant:*” — Here it would seem that her Ladyship had spoken to Mr. Donellan, and given him the information from a window, or from the stair-case; which is perfectly irreconcilable with the account I have transcribed from the trial. — But there is still a different story told by the same witness; on her second examination before the coroner, taken September the 14th, wherein she says, “that *upon perceiving the effect the medicine had upon the deceased, she desired one of her servants to tell John Donellan, Esq; her son-in-law, to come up stairs to her into the deceased’s room; that soon afterwards Mr. Donellan came up stairs into the deceased’s room to this examinant; and that she thereupon informed him how the medicine had affected the deceased, and the situation he was in.*” — “Was there ever a more palpable inconsistency than between this account and the preceding! it is absolutely impossible to conceive any distinct meaning that will make these three stories accord with each other, and almost so to admit any incorrectness of memory, that could occasion such circumstantial contradictions: — Surely if the witness could not speak with precision, it was incumbent on her to say nothing on the subject, or else to express herself with diffidence; but the three different accounts are all given in a manner quite positive and unqualified.

Since we cannot find any certainty then on this subject, from her Ladyship, let us resort to the account given by the prisoner, and William Frost, the servant whom she dispatched for Mr. Powell: In Mr. Donellan’s authenticated case, the matter is thus related, “that returning from Newnham Wells in about three quarters of an hour, he was met by William Frost, who told him that Lady Boughton wanted him immediately — William appeared to be out of breath, and something agitated, Mr. Donellan therefore asked him what was the matter? He replied that Sir Theodosius was taken ill, and that he was going for Mr. Powell, and added, that Lady Boughton desired him to take the mare, which Mr. Donellan was then upon, as she would go fastest — on this, Mr. Donellan immediately dismounted, gave him the mare, and “*bad him fly,*” then went as fast as he could towards the house. He was met by Lady Boughton, who hastily told him, that “soon after she poke to him out of the window, she gave Sir Theodosius his physic, and that it had made him *mighty bad.*”

Though this account will not reconcile all the contradictions in the evidence of Lady Boughton, it will go as far in doing so, as any other that can be suggested; and is quite consistent with the testimony of the servant, which I shall now transcribe from the printed trial — “The morning that Sir Theodosius died, the Captain and my Lady were to go to the Wells to drink the water; they ordered me to get the horses ready — I got them ready near seven in the morning — I took them to the gate — Captain Donellan came out to the gate, and felt the horses girths — he said “are they fast William?” I said “they are;” he said “I will go and see if my Lady is ready:” he came back and said, “my Lady is not ready yet, I will take my mare and go to the Wells.” I took the horses in. When I had been in the stable a considerable time, Lady Boughton came, and called “William:” I said “my Lady;” — she said, “you must go to Mr. Powell, and fetch him as fast as possible, my son is dangerously ill —” I said, “there was none but her horse in the stable;” she said, “that would not go fast enough, I must get the mare;” I told her “Captain Donellan had the mare;” she bid me go and meet him, and take the mare: I shut the door and went towards the gate. The Captain came inside the gate, I told him I was to go to Mr. Powell — Captain Donellan made some answer, but what it was I did not take particular notice — I took the mare and went.”

Here Mr. Donellan’s account is closely corroborated, as far as the witness’s memory served him, but her Ladyship is contradicted in more points than one; for she swore on the trial, not only that Mr. Powell was the only person sent for, but that she ordered the servant to go for him upon the first horse he could get. It appears also from this witness, that Mr. Donellan actually went to the Wells on her Ladyship’s saying she was not ready to go out, as is stated in the case; and that in all probability, the time of his absence from Lawford is there pretty accurately given at three quarters of an hour. For Frost says, that after he was gone, the horses were taken out, and put up, that he then remained

remained in the stable a considerable time before Lady Boughton called to him, that after receiving directions from her he met Mr. Donellan just entering the court yard. Now according to her Ladyship the whole intervening time from her speaking to Mr. Donellan out of the window till she saw him again up stairs was only ten minutes.

The reader, if he has attended to the learned judge's arguments on summing up the evidence; will perceive that I have had another motive besides the desire of pointing out Lady Boughton's inaccuracies, for insisting so long on the preceding particulars; for much stress was laid upon those words of the prisoner, *what do you want?* As if by that enquiry he meant to insinuate, that he was ignorant of Sir Theodosius's situation.—This ground of suspicion is now, I hope, entirely done away, for it surely cannot be believed after the preceeding comments on her Ladyship's evidence, that those words were actually spoken by Mr. Donellan. But with all the respect I feel for the learned judge, I must be of opinion, that even from the tenor of her Ladyship's evidence on the trial his inference had not been drawn; if the inconsistencies of the witness had been as closely attended to as those of the prisoner; for view the question and the answer together, and the one is not more strange than the other; there might therefore perhaps have been good reason to reject both, rather than impute such irrational conduct to the prisoner, as an attempt to conceal from her Ladyship his knowledge of her son's illness, when he had just dismounted, by her own order, that the apothecary might be sent for.—The learned judge when he adduced this argument had just been touching on the subject of *fatality*, and superstition had, no doubt, at that moment, clouded a little his excellent judgment.

stated The conversation which her Ladyship had with Mr. Donellan on his coming up stairs, is on the trial ~~stated~~ as follows; He asked me, "what do you want?" I said I wanted to inform him what a terrible thing had happened, *that it was an unaccountable thing in the Doctor to send such a medicine, for if it had been taken by a dog it would have killed him.*—I did not think my son would live. He asked in what manner Sir Theodosius was taken? and I told him; then he asked where the physic bottle was? I shewed him the two draughts. He took up one of the bottles, and said, "is this it?" Yes, said I.

Not a word of this conversation is contained in either of her Ladyships depositions before the Coroner though it is most essentially connected with what ensues; for that strong circumstance against the prisoner, of his rinsing the phial, would have been so softened as to be almost immaterial, if it had not been said that their suspicion of poison being contained in it, was previously declared. Now it is very remarkable, that her Ladyship's memory should be more retentive of distant than recent impressions; that this conversation should have been entirely forgotten on both her examinations at the Coroner's inquest, when every degree of assiduity and influence was employed to make the evidence as perfect as possible, and when, if Mr. Donellan's case may be credited, she was severely catechised in private, to make her disclose every circumstance she knew; yet she remembered distinctly seven months afterwards, and related circumstantially in court without the least hesitation. It is also worthy to be remarked, that her Ladyship instantaneously declared a suspicion of Sir Theodosius being poisoned to Mr. Donellan, when he entered the chamber, though the alarm of her son's dangerous situation had been spread in the family before, without any insinuation of such a cause; and when a servant had been dispatched to the apothecary, without instructions to mention the medicine at all; for suspicion was not then directed to any particular person, and therefore there could be no motive for concealment—however, so it is stated in the evidence.

I come now to the fact of rinsing the phial which Lady Boughton relates in these terms:—"He took it up, (that is the phial) poured some water out of the water bottle, which was just by into the phial, shook it, and then emptied it out into some dirty water, which was in a wash-hand basin. After he had thrown the contents of the first bottle into the wash-hand basin of dirty water; I observed that he ought not to do that. I said, "what are you at? You should not meddle with the bottle;" upon that, he snatched up the other bottle, and poured water into it, and shook it, and then he put his finger to it and tasted it: I said, "what are you about? you ought not to meddle with the bottles;" upon which he said "I did it to taste it. Q. Had he tasted the first bottle. A. No.

Such was her testimony on the trial relative to a fact which I may say was principally to decide on the fate of the prisoner, but how will the reader be astonished, when he attends to the two following accounts

accounts of the same circumstance given by Lady Boughton herself, deliberately given, on her examinations before the Coroner! I transcribe them literally from the recorded depositions.

“ That John Donellan, Esquire, this examinant’s son in law being informed by her of the situation the deceased was in, came up stairs to this examinant, and after being informed by this examinant of the medicines she had given him, desired her to give him the bottle, and *that he then put water into the bottle, and poured it, and the settling of the bottle out together, put his finger into it, and informed this examinant it had a nauseous taste.*” — Here is the whole account her Ladyship gave of this transaction on her first examination, and it is almost insulting the reader’s penetration to observe, it is as plain, direct, and irreconcilable contradiction, to her testimony on the phial, as even the ingenuity of a counsel on the opposite side could have suggested, had he been sure that evidence would follow to support whatever he chose to assert. Let us compare them minutely.

On the trial, she swears that he rinsed the *first bottle into a wash-hand basin of dirty water*, and positively, *that he did not taste it at all.* On the Coroner’s inquest it is not the *first bottle*, for she only mentions one, and here there is no basin of dirty water, for she only mentions generally *that he poured it, (that is the water) and the settling of the bottle out together, put his finger into it, and informed her it had a nauseous taste.* Put his finger into it! Into what, the basin of dirty water? Surely no, but into what he had poured from the phial alone, else how could he distinguish its taste? Had he thrown the contents of the phial into dirty water, she must have seen at once the fallacy of the experiment, and would have stated that in her testimony. Consequently it was poured into some empty vessel. But how came her Ladyship then on the trial, to state, that he never tasted the contents of the first ~~phial~~ at all; or how came she then to omit, that material observation he made, correspondent with her own, and that of her son, that the medicine had a nauseous taste. After all, what is become of the second phial, her remonstrance, his apology, and the other plausible particulars, she swore to on the trial?

In her second examination the account is varied very importantly; it is recorded in the following terms: “ That the said John Donellan thereupon (viz. on her pointing the phial out to him) took it off the mantle piece, swilled the bottle out with water, and threw the water and the medicine which was left at the bottom of the bottle *away together upon the ground*: immediately upon which this examinant expressed her surprize, that the said John Donellan should interfere with the bottle, or throw away such part of the medicine that was left therein: whereupon he informed her that *he did it in order to taste it*; but this examinant says, *that the said John Donellan did not taste the medicine which was left in the bottle, either before or after he had put the water therein, but that as soon as he had swilled the bottle he threw the medicine and water upon the ground*; and that the said John Donellan threw something out of a second bottle which stood upon the deceased’s mantle piece, but what was contained therein, this examinant cannot tell.

Here we are presented with a story which, though diametrically opposite to the former, appears at first view more reconcilable with her evidence on the trial; but I shall endeavour to shew that it is to the full as inconsistent with that as the preceeding: in order to this let us compare it with both.

On the first examination, she mentions only *his rinsing one phial*, on this she swears circumstantially to two, on the former, he tasted *the contents of the only phial that he rinsed*, with his finger, and declared *the taste of them.* But here she swears positive, that *he rinsed two, and tasted neither.* On that she swore generally that he *poured the water out*, but with an apparent intimation, that it was poured into some vessel, into which *Mr. Donellan put his finger*; — on this, expressly, that the contents of a first phial were *thrown on the ground*, and indefinitely, that those of another were *thrown away* — there Mr. Donellan actually *tastes the bottle*; here he says, after rinsing the first, *that he did so to taste it.*

These contradictions however, are not more extraordinary than those which will arise from the other comparison, that between her Ladyship’s second examination before the coroner, and her evidence on the trial. The only point in which these two last correspond is, that two phials were rinsed, and this correspondence serves only to make the other circumstances more plainly incompatible with each other; for the water from both phials by the written testimony *was thrown upon the ground*, by the oral, *was poured into a basin of dirty water*: by that, *neither was tasted*, by this, *the last certainly was.*

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On the former occasion, her Ladyship swore, that Mr. Donellan threw something out of a *second bottle, which stood upon the deceased's mantle-piece*, and that *she did not know the contents*. On the latter, she swears, that he *poured water into THE OTHER bottle, shook it, and emptied it out*.—— Finally, before the coroner, she states that the apology, “I did it to taste it,” was made by Mr. Donellan, on her remonstrance after his rinsing the first phial; but on the trial she swears, that he used those words after rinsing the second, in consequence of some words from her, which are not mentioned at all in the depositions, and that he had given no answer whatever to her first expostulations.

Surely it will be admitted that after such a variety of inconsistencies as here enumerated her Ladyship's evidence in general, is not much to be depended on; and that this particular fact of rinsing the phial is totally unworthy of attention. If from such a series of contradictions any thing determinate could be gathered, it must be this, that Mr. Donellan very naturally endeavoured to find out the ingredients of the draught Sir Theodosius had taken, that he might be able to determine if they had any noxious quality, that he took the only possible means of doing so, by mixing a little water with the sediment that remained at the bottom of the phial to wash it out; that her ladyship was in too much agitation of mind at the time to observe, or recollect accurately what passed, and that her imagination being afterwards heated with suspicion, suggested things which had no foundation in fact. But for greater certitude in this, let us resort to the printed case, solemnly attested by the unhappy gentleman after his conviction, wherein the matter is very accurately and consistently explained. Mr. Donellan, as it is there stated, viewing the sad situation in which Sir Theodosius lay before him in the bed chamber, and learning from her ladyship, that the symptoms were immediately consequent upon his taking the draught, asked for the phial that had contained it—She pointed it out, and related at the same time the circumstance of her shaking the phial at her son's request to mix up the sediment, exactly consonant to her first deposition before the coroner. Mr. Donellan looked at the phial, and not being able to discover any dregs or relics in it, held it up between himself and the light to be better satisfied; still discerning no remains of the medicine, he put in a little water, that it being impregnated with as much of the draught as adhered to the glass, he might, by shaking it, find out the ingredients. The quantity of water put in did not exceed a tea-spoonful, and after rinsing it well in the phial, he poured it out into a *small white basin* then on the table.—He tasted it several times, by dipping his finger in it, and applying it to his tongue, after which he informed her ladyship, “there was not flavour enough of the medicine to discover its composition, but that it tasted very nauseous.” He afterwards tasted two or three more medicines then in bottles on the chimney-piece, where there were many phials, gallipots, &c. some of which smelt very offensively.

It is observable, that one circumstance in this account serves to fill up a very obvious chasm in her ladyship's first story, by stating that the water was poured out into a small basin that stood on the table, now nothing is more probable than that such an utensil actually stood there at that time, for her ladyship mentions on the trial, that she gave her son some water to wash down the medicine, and if that was not given in a basin or tea-cup, which it most probably was, still some vessel of that kind was necessary for receiving the physic from the phial.

A great deal more might be said relative to this fact, which was deemed so strong an evidence of guilt; but were every circumstance to be treated as diffusely as it might be, this argument never would end.

The next material fact stated by Lady Boughton in her evidence was this; That upon Sarah Blundell and Catharine Amos, two maid servants coming up into Sir Theodosius's room, Mr. Donellan desired the former to take away the basin, the dirty things, and the bottles, and that he put the bottles into her hand. That she (the witness took them out of her hand, set them down, and bid her let the things alone: That upon this Mr. Donellan desired the room might be cleaned, and the cloathes thrown into an inner room; that she opened the door of the inner room, and as soon as Sarah Blundell had put the cloathes therein, Mr. Donellan put the bottles into her hand again, while the witnesses back was turned, and bid her take them down, and was angry she had not done it at first. Mr. Howarth upon this with great propriety put the following questions: Q. Did you see the bottles put into her hands the second time?—A. *I did not*.—Q. Did you hear any order given by him?—A. *No; but Sarah Blundell told me so*.—Q. Then all you know in fact is, that they were taken

out of the room?—A. They were.—Q. You did not see who took them out?—A. No.—Here we find the witness's positive assertion reduced into a mere hearsay, by the close and humane interrogatories of the council; but it is rendered, if possible, still more insignificant by the following questions from the Court. Q. Did you see who first left the room after the cloathes were put into the next room?—A. Sarah Blundell left it first.—Q. How soon did you perceive that the bottles were gone?—A. I did not observe it directly.—Q. But how soon did you find out that they had been removed?—A. I cannot tell the time.—Q. Before you left the room yourself, did you discover that the bottles were gone?—A. I did not.—Her Ladyship therefore is totally ignorant, whether Mr. Donellan ordered the servant a second time to remove the bottles, or whether in fact they were removed that morning. His having even once given such an order, is a matter perhaps not incontrovertible, as it rests solely on the credit of that testimony, which I have proved to be erroneous in so many points already, though another witness for the prosecution, Catherine Amos was present at the time. However it would be insisting on a matter of no consequence, to combat the circumstance of his having once given the phials to the servant, for encumbered as they were with those and other utensils, and Mr. Donellan holding, as it is fair to suppose from the tenor of the story, two or three empty bottles in his hands, when the servant was setting the room in order, nothing could be more natural than his giving them to her. As to the expressions her Ladyship mentions, if she was correct in stating them, it was, to all appearance, the first instance of that kind in her evidence.

Mr. Donellan accounts for his conduct on this occasion, in a manner very easy and satisfactory, and exactly conformable to that conjecture I have drawn from the evidence; he had been smelling he says, to many phials and gallipots that stood on the chimney piece, and her Ladyship had been throwing the dirty cloathes, &c. into the interior room. Sarah Blundell was helping her Ladyship, and passing by where he stood, he supposing every thing was to be removed, to assist in doing it, threw the bottle he had been smelling into her apron. Here there is no mention of any resistance from her Ladyship, and though it stands uncontradicted by proof, that she did forbid the servant to remove the bottles, and took them out of her hands; yet let it be observed, that only upon her own evidence does that circumstance appear, for Catherine Amos says nothing to corroborate it, though she was present in the chamber all the time, and though upon her examination she had just heard her Ladyship's evidence, to this effect. It may be objected to any inference from this, that Catharine Amos is silent too upon Mr. Donellan giving the phials, a circumstance admitted by himself: but here there is a very obvious answer; for her Ladyship swears, that one of the servants was employed at the time, in wiping the froth from the mouth of her son, who was not then dead; now as Sarah Blundell was engaged in cleaning the room, Catherine Amos must have been that servant, only two being present. It was impossible consequently that she could see what was done by Mr. Donellan, though she could not help bearing her Ladyship's order. The total silence of this witness, as to every transaction in the deceased's bed-chamber, deposed to by Lady Boughton, deserves particular attention. It is plain enough she could give no support to the former testimony, or she would certainly have been examined minutely concerning all the preceding circumstances; and this is the more observable, as the death of the other servant Sarah Blundell, was stated to occasion some defect in the evidence. Was then the observation and memory of this woman more perfect than her fellow servant's, or are we to receive for truth what Mr. Donellan intimates a suspicion of in his case? But let us return to the subject of the bottles, and see how well the prisoner's second order to remove them has been proved. "While my back was turned, says Lady Boughton, Mr. Donellan put the bottles into her hand again, and bid her take them down, and was angry she had not done it before." Yet she afterwards admits, that she neither heard nor saw any thing of this, but only knew it by report from the servant herself. What! because her back was turned, could she not hear Mr. Donellan's words? and the words of anger too, which are commonly spoken in an elevated tone of voice? Strange indeed! and Catherine Amos, could she not hear them? Surely it would have shewn more candour and humanity in her Ladyship, not to mention so improbable a hearsay as this at all, than to state it as she first did for a positive fact. She was told so (she says) by Sarah Blundell; I doubt not, she actually was, but could any thing be more natural, than for a servant when found fault with perhaps for her conduct in removing the phials, to lay the blame where alone it could plausibly be laid.

The next circumstance against the prisoner deposed to by her Ladyship was this; that being down in the parlour with Mr. Donellan and her daughter, on the morning of Sir Theodosius's death, Mr. Donellan in her presence, said to his wife, "that her mother had been pleased to take notice of his washing the *bottles* out, and that he did not know what he should have done, if *he had not thought of saying, he put the water into it, to put his finger to it to taste.*" The reader will perceive, that the presumption arising here against the prisoner, absolutely depends on his language being correctly stated; for that he should mention the circumstance to Mrs. Donellan, is natural enough, and what indeed it would have been strange in him to omit, if her Ladyship did in fact as she states, find fault with his rinsing the phials; but his language as here given, implies, that the reason he assigned for his conduct, was a pretext invented to colour it, after he had been censured. Too much stress should never be laid on an inference, drawn from suspicious language, even when it is reported by an accurate and credible witness; for meanings are often imperfectly expressed, and still oftner erroneously understood; but I conceive it impossible to rely on her Ladyship's memory, after all the comments here made on the preceeding part of her evidence, without judging as harshly of herself, as of the prisoner. In her deposition before the coroner, no mention whatever is made of this circumstance in the parlour, yet being cross examined by the prisoner's council, as to that point, she swore positively that she disclosed it at the inquest; the question was repeated, and she again positively swore, that she then disclosed it; admitting too, that her evidence was read over to her before she signed it. Being asked whether it was disclosed on her first or second examination, she could not tell which. Now I could ask what confidence can be placed in the testimony of a witness as to words, who cannot swear to facts with the least degree of certainty or caution? But, by attending to the words she ascribes to Mr. Donellan, it will be found that they contain a strange incongruity, if not a flat contradiction of her Ladyship's evidence." She was pleased to take notice of his washing the *bottles* out, and he thought of saying he put the water into *it* to put his finger to *it*. Here we have but one bottle washed, and there, we have two at least, *bottles* being in the plural number, but the relative twice in the singular." It is absurd to suppose, that Mr. Donellan thus expressed himself, for this is not only a grammatical solecism, but a contradiction in sense, and I have already observed, that if her Ladyship was not verbally accurate, no certain construction could be put upon the language in question.

The circumstance sworn to by this witness immediately afterwards relative to Mr. Donellan's question to the coachman, I might pass over without a comment, for the learned judge very judiciously observed, that for want of knowing the prisoner's conversation, it could not be relied on as any ground of suspicion. There can be no doubt, that he had been previously charged by her Ladyship, with being in her son's room that morning, or a question to ascertain the contrary, would have been ridiculous; and that this was actually the case, is more manifest by the coachman's evidence, for he states that Captain Donellan, on receiving his answer, said to her Ladyship, "*Look Lady Boughton, what William says?*" Which can only thus be construed; "Hear and admit now, that you have charged me wrongfully." It may be gathered from this, that though by her Ladyship's evidence, great latitude was given to suspect, that the prisoner might have changed the phials on the evening preceding Sir Theodosius's death, she did not at first see the probability of that herself, for if it had then been obvious, that the deed was practicable the night before, she would not have resorted to a ground of suspicion, contrary almost to possibility, and clearly so to fact, as it was afterwards proved.

The next part of her Ladyship's testimony, related to the letters which passed between the prisoner and Sir W. Wheeler; of what she deposed on this subject, I shall take notice in another place, and proceed now, to a circumstance, which has all the authority this witness's evidence can give it, but by Mr. Donellan was solemnly denied. "He said to his wife, before me, that I had no occasion to have told of the circumstance of his washing the bottle, I was only to answer such questions as were put to me—and that question had not been asked me." This has been thought a very formidable fact against the prisoner, but perhaps if dispassionately considered, may be supposed to have arisen from a very innocent source: If Mr. Donellan actually said so, it was no doubt a very weak and inconsiderate expression, and yet such I will be bold to say, as an innocent man, if not perfectly acquainted with the obligation of an oath, in judicial enquiries, speaking with confidence in the hearing of a supposed friend, might have naturally used. Let us suppose this unfortunate

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man for one moment not guilty of the crime for which he was condemned, and see whether any thing in the expressions here sworn to, will clash with that idea. He has inconsiderately washed the phial to taste it, and finds that however innocent his motive of doing so was, it had been construed into a ground of suspicion; he believes Lady Boughton satisfied of his innocence, and therefore thinks, that in divulging a fact about which she was not interrogated, she officiously furnished a ground of unmerited imputation against his character; he holds this inconsistent with the dictates of family affection, and therefore complains of it:—There is nothing criminal in all this, and plainly nothing improbable; but if we also take into consideration that at this time all danger of further legal enquiry was thought to be removed, and consequently Mr. Donellan could have no apprehensions of other danger but to his character, by her Ladyship's evidence; the language in question will be still better vindicated, for he feared only the malignancy of slander, which as no future investigation of the fact was then likely to ensue, might traduce him at pleasure, and never be refuted.

The last circumstance against the prisoner, deposed to by this witness, was given in the following terms; “When the things were removing away to be put into the inner room, he (Mr. Donellan) said to the maid, “Here take his stockings, they have been wet—he has caught cold to be sure, and that might occasion his death.” Upon that I examined the stockings, and there was no mark nor appearance of their having been wet.” This appears to me, hardly important enough to be worth an explanation, and I am sure it is too plain to require one:—What is more natural and universal than when we see people disordered, to guess as well as we can at the cause? And considering Sir Theodosius had committed no other irregularity the night before than being late out at the river, employed in the inactive diversion of fishing, I cannot conceive a more probable conjecture than that of his taking cold, and wet feet being partly the cause of it?—Her Ladyship swears the stockings were not wet, nor had the appearance of having been so; but Mr. Donellan did not say they were so at that time, nor had he felt them to determine; he only says they *have been* wet, he has taken *cold to be sure*, which is in other words, “*I suppose such to have been the case*,” with respect to “the appearance of having been wet.” I presume clear water does not always leave a visible mark behind it; but at any rate Mr. Donellan did not mean to deceive her Ladyship as to the condition of the stockings, or he would have taken them away himself, for he could not expect she would believe him rather than her own senses.

I have now done with Lady Boughton's testimony, as far as it was designed to operate against the prisoner; and except a few immaterial passages, which shall be noticed hereafter, in their proper connection with other parts of the evidence, have taken a full review of the whole—many things she deposed which make in favor of this defence, but those will be considered in the sequel, when we come to enquire what the prisoner proved, or could have proved, to weigh against the evidence of the prosecution. It may be expected that the complexion of this testimony in general should be now more pointedly considered; and were the object of our present enquiry still more important than it really is, did the life of Mr. Donellan, and not his posthumous reputation alone, depend upon the issue; some reflexions of that kind ought in justice to be made; but as the case now stands, delicacy forbids to exceed a simple refutation of her evidence; whatever general remarks therefore may be made the reader's judgment is left to supply.

Catharine Amos, the third witness called, gave apparently a very fair and open testimony, but nothing tending to criminate the prisoner, and nothing inconsistent in any particular with his printed case. She only spoke to two facts of any consequence; the first of which was the following, “That she saw Mr. Donellan in the passage upon the morning of August 30th, about a quarter of an hour after she had left the room of Sir Theodosius, and that he said to her, Sir Theodosius was out very late over night a fishing, that it was very silly of him as he had been taking such physic as he had been taking of before time.” The inference drawn from this against the prisoner arose chiefly in a comparison between it and some language he used the same morning, to Francis Amos, the gardener, which, though out of its place, I shall here transcribe, that the reader may better judge of the argument by seeing the two papers together, “poor fellow (said Mr. Donellan, speaking of Sir Theodosius to the gardener) he lies in a sad agony now with this damned nasty distemper, the pox; it will be the death of him” Mr. Howarth placed these two facts before the jury in a light which might appear just at first view, but the least degree of attention will prove to be fallacious. “Mr. Donellan

Donellan (argued he) found it incumbent on himself to account for the death of his brother in law, therefore went about among the servants, accounting for it in various ways; to one, saying that he died in consequence of a cold, and to another, by the venereal disorder."—But attend to the two expressions here, and there is not the least diversity of meaning, for he ascribes in the first the deadly effects of the cold, to its being caught after taking the phyc, (meaning the mercury) that Sir Theodosius had some time before been taking for the venereal disease, and in the second case, he says generally, that disorder was the cause of his death.—Where is the contradiction here? The prisoner did not chuse to shock a woman's ears with gross terms, nor did he with the gardener stay to express his full meaning; but the idea with which he was himself impressed is obvious in both cases; he believed, as for the present purpose, it is fair to suppose that a violent cold after a course of mercury had produced the terrible effects he saw, and it was proved, that at the time of his decease, the young Baronet had the venereal disorder still upon him. The primary cause therefore was given on one occasion, and the immediate one on the other. This witness also deposed, that Mr. Donellan said to her, on the day when the body was opened, after his return from the coroner's inquest, "there was nothing the matter, that the breaking of a blood vessel had occasioned Sir Theodosius's death." Here his opinion appears to have been altered; but surely on the most warrantable grounds, for on the dissection of the body, a quart of extravasated blood was found in the thorax, and this, which was hardly reconcilable with his first conjecture, strongly indicated the rupture of a blood vessel. No presumption of criminality can fairly arise, because his opinion varied with the data upon which it was grounded; and here he had the internal state of the body to reason upon, whereas, before, he knew only the external symptoms.

Nothing else was sworn to by this evidence that requires any explanation; she was questioned about the still, but could say nothing on that subject but what is given afterwards more at large by the gardener.

The next witness called, was the Rev. Mr. Newsam, *Rector of Great Harborough*, whose connection with the Boughton family, the reader will find, stated in Mr. Donellan's printed case. This gentleman relates a conversation that passed between himself and the prisoner at Lawford Hall, on the Saturday preceding the death of Sir Theodosius Boughton, in which the prisoner represented the young Baronet to be in a very bad state of health. As I have already shewn that such representations, if actually made, were sufficiently founded in fact, there is no reason to dispute with Mr. Newsam, any thing he has asserted: but I must observe, that there are some material differences between the conversation here stated, and that mentioned in the printed case; particularly, it is said in the latter, that Mr. Newsam's enquiries introduced the subject, a circumstance which, if true, the Reverend gentleman had done well to mention in his evidence. This part of Mr. Donellan's case was in a particular manner confirmed by him before his execution; he solemnly protested, that notwithstanding Mr. Newsam's different account on the trial, what was related in his brief, was in purport, if not in words, the whole conversation between them; and to shew that they both entertained the same ideas of Sir Theodosius's constitution, it is stated, that the Reverend gentleman professed opinions on that subject similar with those of Mr. Donellan, to a Mr. Clay, of Rugby. Indeed he admits in his evidence, that the young baronet's appearance was much altered for the worse some time before his death, as he had lost his florid complexion.

Mr. William Kerr, a surgeon of Northampton was called to prove, that he attended the deceased when he was at Mr. Jones's, that he had no disorder then but a small wart or excrescence upon the prepuce, which the witness deemed so immaterial as not to be a subject for medicine; yet admitted that he prescribed a lotion to wash it with.

This, and whatever else in the evidence relates to the health of Sir Theodosius I have already provided an answer to; but for further satisfaction to the reader, let him resort to the printed case where will be found innumerable circumstances tending to shew that he was always in a greater or less degree infected with venereal disorders, from sixteen years old to the time of his decease. That he had, during this interval, taken great quantities of mercury, appeared from the bills of three apothecaries, which were in Lady Boughton's possession, and which I am authorized by the solicitors to say, she had in court ready to produce, had the prisoner's council thought fit to call for them.

We proceed now in order to the very curious and scientific evidence of Dr. Rattray, a *Coventry Physician*, whose professional knowledge and accuracy are so conspicuous, that in justice to the Doctor himself, as well as Mr. Donellan, I wish to pay him the most minute attention.

He begins with relating that he was sent for to Lawford-Hall, on the 4th of September, that he went there in company with Mr. Wilmer, the surgeon, was received by Mr. Donellan, &c. Some circumstances are here interspersed of great importance relative to the prisoner's behaviour and representations which I shall not notice at present, as till the reader is made acquainted with Sir William Wheeler's letters, they could not be properly understood; at length, all preliminaries adjusted, the Doctor brings himself to the room of the deceased, and then continues his relation as follows:

"Mr. Wilmer went in first I believe; he came out of the room testifying some surprise as I entered the door: I immediately entered and saw the body for the first time. Q. Did you use any expression of any sort at the time of your seeing the body to Capt. Donellan? A. I went into the room and looked at the body several times, and came out to Mr. Wilmer; he seemed to think it would answer no purpose to open the body at that time; and we asked Capt. Donellan for what purpose it was to be opened, and he said it was for the satisfaction of the family; we thought at so late a period, and it being only for that purpose, that it was of no use, therefore we waived it. Q. Had Captain Donellan said the opening it was for the satisfaction of the family? A. Yes. He told Mr. Wilmer so, and I think when I went up, the same speech was repeated to me. Q. Did he mention any other purpose for which the body was to be opened except the satisfaction of the family? A. None to me that I recollect. Q. Did he at the time intimate to you any suspicion of poison? A. No. Nothing of the sort. Q. In consequence of this you did not in fact open the body? A. We did not open the body.

This very learned gentleman had been so laboriously explicit in the former part of his testimony, that he would not mention the term *anonymous*, without explaining himself to mean *without a name*; nor *Doctor Wilmer*, without intimating that he was not in fact *medicinal doctor*, but only a surgeon; yet in the passages I have transcribed, his memory, or caution, have so unhappily failed, that every thing material is omitted, and every thing ambiguous remains unexplained. Who would, for instance, from the preceding account, conjecture that there was any objection to opening the body because of its putridity? Yet that such an objection was made appears afterwards clearly from Mr. Wilmer's evidence, and from the cross-examination of the learned Doctor himself. To be sure it looks oddly on the face of this story, that Mr. Wilmer should quit the room with so much precipitation, and that the Doctor should look at the body *several times*, instead of standing to view it steadily; nor is it altogether consistent that they should go away without employing the knife, because the satisfaction of the family was only concerned, and because the period was so late, when both those matters were understood before they went up stairs. But all these difficulties the jury would have been left to explain for themselves, had the whole rested on the first examination of this very accurate witness.

With respect to Mr. Donellan's language on this occasion, nothing decisive is to be taken from Dr. Rattray; for though he first states positively that "*we put the question*," and *we* of course received the answer, it turns out afterward, that the Doctor does not certainly know if he himself was told any thing on the subject by Mr. Donellan; he can swear only with confidence to a hearsay from Mr. Wilmer. Granting, however, for arguments sake, that the prisoner did indeed say what is here mentioned, still the Doctor's reasoning on the case is not very logical. "If it is only for the family's satisfaction, says he, at so late a period *it is of no use*." Of no use! surely for any thing he has said, it may have some utility, by giving the family that satisfaction they wanted." But the fact was, as it will hereafter appear, that both the doctor and the surgeon then thought the putridity of the body would prevent them from discovering the cause of death. Now, if by its being of no use was meant, that the satisfaction the family wished could not be procured, I contend the suspension of poison would not at that time have changed their sentiments, as no motive for the operation could add to, or detract from, the probability of its success.

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That Mr. Donellan actually did assign the motive here mentioned for opening the body, though by no means established by Doctor Rattray, I have no objection to admit, not only as matter of argument but fact; for the satisfaction of the family was clearly the only object immediately to be attained by the operation; suspicions had gone abroad, and it was for the satisfaction of the family that they should be defeated by discovering the cause of death; the idea here and the very phrase itself are taken from Sir W. Wheeler's letter, which the prisoner was blamed for not producing. I should be happy to learn, but am totally unable to guess, what was conveyed to the understanding of the medical gentleman, by the expression of Capt. Donellan; for to me it clearly appears to mean, that there had been some suspicions of the melancholy event being produced by unnatural means. Could the satisfaction of the family depend on ascertaining whether the disorder was an epilepsy, or an apoplexy, or what other natural cause had produced death? *curiosity*, and not satisfaction, seems in this case the proper term. But it is astonishing the doctor and surgeon should be ignorant of the true cause for which they were called, or that Mr. Donellan should be supposed to have wilfully concealed it, when this witness admits being shewn the second letter of Sir William Wheeler, at whose request he was sent for, and in this every thing is as plainly laid open as in the first, except the word *poison* was absolutely necessary to convey an idea of the suspicion. Sir William therein thus expresses himself to Mr. Donellan, "I hope that you understand that it is not to satisfy my *curiosity*, but *the public*, that I wished to have this done, and to *prevent the world from blaming any of us that had any thing to do with poor Sir Theodosius*." Could any man of common sense read this and be at a loss afterwards to know what was intended by *the satisfaction of the family*? The Doctor, however, vindicates his penetration by saying, he only glanced the letter over; "It was late," added he, "and I wished to get over such little matters as these." How admirably circumspect! the motive of the operation alone was to decide, it seems, on its propriety; but a letter plainly containing that motive, a letter from the gentleman at whose request he was called, was a *little matter* to be *slightly glanced over*; and yet it was argued against the prisoner, that he did not produce the first letter of Sir W. Wheeler for the physicians regulation, though the witness admits that he searched for it. Surely it cannot be imagined that the Doctor would give time to find a paper that was mislaid, when he would not stay to read one already in his hand! but however slightly the witness glanced over the letter given him to read, he knew enough to remember some part of the contents; and Mr. Donellan concluding no doubt that he had read the whole, could not suppose him to remain ignorant of the writers sentiments; he therefore acquiesced in the Doctor's impatience, and without looking further for the first, permitted him to go up stairs. What imputation then, let me ask, could arise here against the prisoner? In what was he deceitful or reserved? For my part I cannot conceive conduct more explicit than his. If foul imputation had been thrown upon the family, it must have been an exceeding irksome task on him to relate them with his lips; and there was no necessity of doing so, for a production of Sir W. Wheeler's letters, one of which he actually shewed, and would have shewn the other, was at once laying open all the information he had received on the subject.

But the most unanswerable vindication of the prisoner, is this: that one of the medical gentlemen present (Mr. Powel) had himself conversed with Sir W. Wheeler on the subject, and was fully apprised of those motives which made him wish the operation to be performed; was himself also one of the parties whose character was concerned in the reports then prevalent abroad, and had on that account professed an earnest wish that the body should be opened; how was it possible to suppose then, that the medical gentlemen with such an assistant could want any information from Mr. Donellan? It is remarkable enough that Dr. Rattray mentions nothing of Mr. Powell, except his being in the room below, nor takes any notice of his opinion, when he states his own and Mr. Wilmer's; perhaps it is against physical etiquette to consult with an apothecary on these occasions, and yet a man who knew the constitution of the deceased, the medicines he had taken, the reports of the country, and the composition of that draught, the contents of which were said to have been fatal, might have been suffered without any derogation from the Doctor's importance, to give an opinion. But if any remissness was shewn by Mr. Powell, if he neglected to communicate what he knew, and regardless of his own character, suffered the physician to go away with

with erroneous impressions on the subject, what are we to conclude from such conduct? or how remember without astonishment that this gentleman was a witness for the crown? In either case, however, the prisoner is clearly exculpated, for Mr. Powell was in a manner the representative of Sir W. Wheeler, and much more a party in the affair than Mr. Donellan; consequently it was almost impertinent in the latter to say any thing, instead of being strange that he did not say more.

As to his acquiescing in the doctors' judgment of not opening the body, surely that does not require an explanation or a comment, except the witness's first story is to be received without the addition he himself afterwards made to it, and apart from the evidence of Mr. Wilmer; for it appears clearly that they pronounced the operation both dangerous and useless; Mr. Wilmot expressly says, "The body was so extremely putrid, that I declared my opinion to Dr. Rattray, that the *proposed enquiry could give no sort of information*" — Was Mr. Donellan then, however desirous he might have been to have the operation performed, to dispute the opinion of the faculty, and urge them to proceed, tho' with personal danger to themselves, and no utility to any one? Such conduct would have been highly presumptuous, and unreasonable, for except the judgment of these gentlemen was extremely fallible indeed, the public could have no surer intelligence after the operation, than before.

We come now to that theatre of medical ability, the church-yard at Newbold; where, our modern *Hippocrates*, Mr. Bucknell, Mr. Powell, and Mr. Snow, assembled together on the ninth of September, and disturbed the ashes of their patients, by making earth in return for past favours, refund them a single body.

The adventurous Mr. Bucknell, being clad with a carter's frock, well soufed in vinegar, and a towell steeped in the same, bound across his mouth and nostrils, the operation was proceeded to with due solemnity; and after opening the stomach, thorax, &c. after accurate inspection, and long deliberation, these lights of the faculty, were able to satisfy the county of Warwick, and the whole world, that the body had every appearance of *strong putrefaction* having been *dead eleven days*, in very *hot weather* — I say they were able to satisfy the world of that fact, but what were their own opinions on the subject, we shall presently see.

Dr. Rattray describes the external appearances of the body at large; but I shall not transcribe his account, as the reader may not have dined — all the particulars he mentions are those which whoever has seen the humility of human nature when the body begins to decay after death, knows to be the general symptoms of putrefaction. One circumstance he professes to conceal for the sake of decency, and not to disgrace this very decent testimony, I will follow his example — but if the reader's curiosity is excited, he will find this circumstance in the proof part of the printed brief, and will perceive it makes strongly in favour of an opinion, that the deceased and his father died of the same disease.

The witness proceeds to the internal appearances — states, that in dissecting the skin, the fat appeared in a dissolving state, a little watery, and that on getting into the cavity of the belly, the bowels in the lower belly seemed to put on the appearance of inflammation — "I choose," adds he "to make use of the *vulgar term*, *appearance* to convey a general idea of the appearance things in that state generally put on."

The learned doctor's explanation seems here seems quite unnecessary, for if *appearance* is used to signify *appearance*, there is neither vulgarity nor impropriety in the term; but properly to comprehend this idea which the witness found so difficult to convey, we must resort to his cross examination, where being required to declare the difference between inflammation, and the *appearance* of it, he thus answers, "All that I have to say upon the present business is, I perhaps don't know the cause of inflammation; but there is an appearance of inflammation upon the stomach and bowels, owing to an injection of blood into the venous system, the veins being full of blood put on a red appearance."

Q. If you will not take upon you to say what is the cause, what are the signs of inflammation? A. An appearance of redness, sometimes, but not always attended with pain, and sometimes throbbing.

As the two last symptoms do not very well apply to the case in question, we must conclude that an appearance of redness was the only visible sign of inflammation on the stomach and bowels of Sir Theodosius Boughton; and therefore it turns out, that the Doctors difficulty only arose from an attachment to the term inflammation, and an abhorrence of so vulgar a form of speech as *looking red*.—It further appears, that this symptom of redness in the stomach was only occasioned by the veins being full of blood; now, without the least pretensions to anatomical knowledge, I must remark, that this is always the case in a greater or less degree after death, the veins receiving the whole mass of blood by the last pulsation, while the arteries are left entirely empty; consequently I should suppose, that when a man dies suddenly, having a more plethoric habit of course than after long sickness, the veins will be much distended, and must assume the very appearance here described: Probably the doctor never dissected a subject of this description before, and therefore thought the symptom he points out a peculiar one; but I should beg pardon for offering my own imperfect ideas on this part of the evidence, since all the doctors conclusions are hereafter refuted by no less authority than that of Dr. Hunter.

The witness goes on to describe a variety of appearances in the thorax, and enlarges considerably beyond the account he described at the coroner's inquest immediately after the dissection. Being cross questioned to declare the reason of this difference, he says, "I did not know it was necessary before a coroner's jury to enter into the particulars;" a reason this, singular enough! but an apt illustration of a circumstance in Lady Boughton's evidence already commented on: when a man of Dr. Rattray's education and knowledge, thought it was not incumbent on him to tell the whole truth, how can we doubt that Mr. Donellan might fall into a similar error with respect to her Ladyship?

The learned doctor's memory was very treacherous, or he had the same ideas on the trial as at the inquest, for with all the appearances he enumerated, that most striking and important one extravasated blood to the quantity of a quart being found in the thorax, was entirely omitted, till it was extorted from him on his cross examination; though it was mentioned in his depositions before the coroner.—Now, truly, this was a most unfortunate failure of memory, considering that it was a very strong evidence of the deceased dying by the rupture of a blood vessel, and not by poison; considering too, that the doctor, if we may credit Mr. Donellan's case, had always been found to rank himself among the partizans of the prosecution, which undoubtedly made it peculiarly requisite for his honour standing in the character of a witness to give a most free and unbiassed testimony.

Having finished his anatomical discoveries, the doctor is desired, for one instant, to forget them, which he does, and then decides with the full weight of his opinion, "that independant of these, he believes, in consequence of the symptoms which succeeded the swallowing of the draught, as described by Lady Boughton, that it was poison, and the immediate cause of Sir Theodosius's death."—I have been much at a loss to conceive, on perusing this trial, why, if such distinctions as this were to be made by the physical gentlemen, and two opinions upon the same point, taken upon different branches of the evidence, that grounded upon Lady Boughton's testimony, was not asked for before the anatomical phenomena was described? the distinction would have then been more intelligible to the jury, and more easy to the learned doctors themselves; for it is almost impossible that any man, after having laid the foundation for an opinion by which his professional skill will be honoured or disgraced, to answer impartially a previous question, the solution of which, in a particular way, may confirm his future judgment.—But perhaps it was thought, that unless the doctor's sapience was first displayed in the church-yard, his opinion would not have so much weight as to what passed in the bed-chamber.

The witness next speaks to the effects of laurel water, and gives the result of various experiments made by himself in company with Mr. Wilmer, and other medical gentlemen, to ascertain the properties of that liquid. Against this part of their evidence, I have nothing particular to offer; the experiments, no doubt, were carefully made, and accurately stated to the court; but the general conclusion he draws from them is totally unwarrantable. "From the appearances observable in the bodies of the animals he poisoned with laurel water; and their analogy to those in the body of Sir Theodosius Boughton, he is confirmed in his former opinion with respect to the operation of the draught;" but this is qualified by adding, "as far as upon viewing a body so long after the death of the subject one can be allowed to form a judgment upon such appearances." The analogy here mentioned, one would naturally conclude, must be very strong, if it could enable the doctor to reason from the effects of poison in brutes to those in a human body, when the former were dissected immediately on their expiring, and the latter eleven days after death; yet the only similitude I can trace between the internal appearances he describes in one case, and those he describes in the other, is this, that in both there was an appearance of inflammation, or *suffusion of blood looking red*; but in the animals there is no mention of such an appearance about the stomach and bowels; whereas in the human subject it was peculiarly seen in those parts.—Now that the immediate seat of the poison should be less affected by its instant than remote operation, when every distinct part felt the most speedy and violent effect, seems very extraordinary; and the witnesses's ingenuity had been well employed in explaining it. Between the lungs of the human subject, and those of the poisoned animals the doctor has made good his analogy, as to this redness or suffusion; but then in the former it was blended with black spots, and in the latter there

there is no such concomitant appearance; he might reply to this, that the black spots were occasioned by the putrefaction.—So undoubtedly they were! but so also was the redness; if the experience of Dr. Hunter may be credited; why then would he explore a plurality of causes for two appearances so clearly connected, when one would have explained both? But there was a stronger mark of distinction in the thorax of Sir Theodosius Boughton from that of any animal the doctor dissected, I mean the extravasated blood, “which putrefaction could not produce, and which laurel water did not, in any experiment by him stated.—What becomes of the analogy here? or why were not the points of dissimilitude remarked by the witness as well as those of resemblance; surely a quart of extravasated blood could not have escaped the penetrating eye of Dr. Rattray in either of the subjects he dissected? He sagely observed to the court, that *nothing is impossible under God*,” but this, humanly speaking, I am inclined to think, an impossibility.

The analogy too, in point of time, between the effects of the laurel water given to the animals, and the draught taken by Sir Theodosius Boughton, is not very strong; for the former produced death in one case almost instantaneously; in another, within three minutes; and the longest time of life in either of the experiments, was twenty-eight minutes from the first taste of the medicine, when the settled quantity was given in small hornfulls, at different intervals: now Sir Theodosius lived considerably more than an hour after taking the draught.

From all these remarks, the reader will judge with what reason the doctor confirmed his former opinion by his experiments; and I should dismiss the subject with observing, that if he had thought of dissecting some of the animals he poisoned at a proportionate distance from the time of their death with that at which the body of Sir Theodosius was opened, his analogous reasoning might have been more just and satisfactory.

This witness, on his cross-examination, admitted, that when he saw the body at Lawford Hall, it was in a state of high putrefaction, and that both he and Mr. Wilmer were of opinion then, that opening it could answer no useful purpose, two facts entirely omitted in his former relation, as I have already observed. He further admitted, that he was not particularly versed in anatomical dissections, and had never attended the dissection of a body that had been poisoned, or suspected to have been so. But another admission made by the doctor deserves particular attention, as it will be an eternal monument of his medical fame among all the sons of the faculty; and yet there is a modesty attending great minds that makes mention with reluctance any thing peculiarly to their own honour, and this was very visible on the present occasion: not to wrong so excellent a quality, I shall transcribe the passage at length.

Q. Did you, or did you not, know the contents of the draught Mr. Powell had prepared, when you was examined before the coroner? A. Yes, I did.

Q. And you knew, from the account given you, how long Sir Theodosius Boughton lived after he took that draught? A. I took my information from Lady Boughton.

Q. Then, whether many reasons have not occurred, subsequent to that time considerably, to induce you to form your judgment that *he died of arsenic*? A. Not subsequent to that time; at that time I did think he died of arsenick, but I am now clear that I was then mistaken.

Q. Why may you not be mistaken now? A. I cannot conceive that in these circumstances any one can be mistaken as to the medicine: from the several qualities described by Lady Boughton, I believe it to be of that nature.

Q. Did not you know at that time the symptoms described by Lady Boughton? A. I did.

Q. Then was not your judgment at that time as ripe for information as it is now? A. *It is now since I have received the information.*

Q. Whether you did not, after you heard Lady Boughton describe the symptoms, and after you saw the body opened, give it as your opinion, that he died of arsenic? A. I have had such an opinion.

Q. And have declared so? A. I did.

To comprehend properly the great ingenuity of Dr. Rattray's first conjecture here mentioned, the reader, if he knows nothing of medicine, must be informed, that *arsenic* is a poison which never operates in less than six or seven hours, and then produces effects totally dissimilar to those described by Lady Boughton; hence it will appear natural enough that the doctor should take all the pains we find he has done, to disguise his exploded opinion, or the data on which it was founded. But what heart so callous, that it will not feel for our Hippocrates when we find him obliged soon after to make the following confession? Every man is mistaken in his opinion now and then, and that was my case; I am not ashamed to own a mistake:” Never, surely, was such an humiliating acknowledgment, and yet the inhuman Council was not content, for he wanted this learned gentleman to admit, that because he had mistaken once, he was liable to mistake again; but, “No,” says the Doctor, “that is impossible.” And what reason does he assign? Why, the most conclusive one that can be imagined, “*I cannot mistake now, because I know just as much of the matter as when I mistook before.*”

Being brought to acknowledge, that a quart of blood was found under the lungs of the deceased; he is now asked, Whether the rupture of a blood vessel would not occasion death? This he answers in the affirmative, but does not chuse to concede so much in favour of the prisoner, without, at the same time, furnishing an answer for the prosecution; his words are as follows: “The rupture of a blood vessel undoubtedly

edly would have occasioned death; but it would not, in my apprehension, have been attended with the same appearances." This impartial witness could not answer a general question, without anticipating the inference from the information he gave, and endeavouring to refute it.

The next interrogatory is,—Might not a blood vessel, in an effort to reach, be broken?—A. I should conceive, that if, in an effort to reach, a blood vessel of that magnitude had ruptured, that he must have died immediately, without convulsions." Here, again, the Court was favoured with an answer, and its application at once. "But, (rejoins the Counsel,) supposing a person recovering from convulsions, for he is stated to be inclined to sleep?" "it is a case, (returns the Doctor) I am not supposing probable." "Is it possible?" "*Every thing, (replies this oracle) is possible with God!*" Now, this answer, if it had not the spirit of Christianity, was most clearly within the letter; that it displayed great professional knowledge too, I need not remark; but I must say, that tho' an old adage, it never was so pertinently applied by any body, as by the Doctor, if we except the facetious Harry Howard, who put it in the grave mouth of a Dutchman, on the question, whether "*A man could bite off his own nose?*"

The reader has had instances enough of that very explicit and direct way in which this witness answered questions favourable to the prisoner, but I cannot help transcribing a few more, which I defy any follower of St. Ignatius to excel.

Q. Did you never hear of any person dying of an epilepsy, or of an apoplexy, with symptoms like those being in convulsions? A. I do not think the symptoms described as having taken place in Sir Theodosius Boughton are like to an epilepsy. Q. Nor an apoplexy? A. They were entirely, in my opinion, the effects of the draught. Q. When respiration grows feeble, is it not a common case that the muscles of the throat are very much relaxed? A. All the effects that succeeded the draught, I believe, were the consequences of it; and if the muscles were relaxed, or foam proceeded from the mouth, they were in consequence of it.

The last passage in this testimony, of which I shall take notice, is the following:

Q. Did you observe or smell that liquor which came out of the stomach? A. I could not avoid smelling it. Q. Had it the same offensive smell? A. It in general had. One could not expect any smell, but partaking of that general putrefaction of the body; but I had a particular taste in my mouth at that time, a kind of biting acrimony on my tongue, and I have, in all the experiments I have made with laurel water, always had the same taste, from breathing over the water—a biting upon my tongue, and sometimes a bitter taste upon the upper part of the fauces.

Here is a discovery with which we were not favoured in the learned Gentleman's former relation, nor do his medical brethren make any mention of it. Strange, *that this witness* alone should have had such a *biting acrimony on his tongue!* But let us proceed with his evidence. Q. Did you impute it to that cause then? A. No; I imputed it to the volatile salts escaping the body. Q. Were not the volatile salts likely to occasion that? A. No; I complained to Mr. Wilmer, "I have a very odd taste in my mouth, my gums bleed." What an insult does he offer here to his own judgment, for his sensation, it seems, was ascribed to a cause which he swears positively was not likely to produce it. But to return—

Q. You attributed it to the volatility of the salts.

At that time I could not account for it, but in my experiments afterwards with the laurel water, the effluvia of it has constantly and uniformly produced the same kind of taste; there is a very *volatile oil* in it I am confident." There never surely was a stranger mass of inconsistency than we are here presented with! first, the liquid has no peculiar flavour, then it has a very acrimonious one, and this is imputed to *volatile salts*, next we are told that volatile salts could not produce the effect, afterwards he says he could not account for it all, then that he has discovered the flavour to belong to laurel water, and lastly his first idea is in part resumed, but instead of a volatile salt it is volatile oil. From all this I can conclude nothing, but that the Doctor was hypochondriacal at the time, and knew as little of what his true perceptions were, as it appears he did of their cause.

Thus much for the evidence and medical authority of Dr. Rattray. I proceed to the next witness, Mr. Bradford Wilmer. This gentleman seems to have given a much more candid and dispassionate evidence than the former. He admits that it was the great putridity of the body at Lawford Hall, which prevented its being opened, and that he was of opinion then the operation would have given no sort of information. Indeed this is an opinion that he seems never to have relinquished, for though present at the subsequent dissection, he gives no judgment on the appearances of the body, nor is examined to that point at all; but on a general question, whether from the tenor of the evidence he judged the draught to have been poison? he gives this remarkable answer:—"After having heard Lady Boughton's evidence, and therefore being acquainted with the symptoms which preceded the death of Sir Theodosius Boughton, I am clearly of opinion that his death was occasioned by a poisonous draught administered to him by Lady Loughton on the morning of his death." Here we see that Mr. Wilmer's opinion on the cause of death solely rests upon Lady Boughton's evidence, and is not confirmed as the last witness professes his to have been by the dissection; this gentleman had too much knowledge in his profession to judge from the appearances of a body so long after death, nor is anywise convinced of that analogy so apparent to Dr.

Rattray.

Rattray. Since every thing therefore depends, as far as the influence of Mr. Wimer's opinion, and indeed those of all the medical gentleman examined, Dr. Hunter's excepted, upon Lady Boughton's evidence, let us for a moment enquire how far her Ladyship's description of the symptoms was accurate and true. I have clearly observed that the time between taking the draught, and the death, must have been an hour at the least; but in all probability it was considerably more, yet her Ladyship gives it at half an hour, as will appear from the following calculation.—— She stated that the symptoms, that is the apparent struggling to keep down the draught, came on, in about two minutes and a half after it was taken; that these continued ten minutes, then she was gone out of the room for five, and on her return it was that she found him in those dreadful symptoms which first appear to have given her any alarm; five minutes after this Mr. Donnellan came up stairs, and in ten more, by all we can gather from her evidence, Sir Theodosius died. Thus, according to Lady Boughton's account on which Mr. Wilmer grounds his opinion; the draught, if the cause of death must have produced its effect in thirty-two minutes. But I have proved before, that her Ladyship's ideas, on this subject, could not be accurate, as she makes Mr. Donnellan only absent ten minutes, though in all probability he was gone full three quarters of an hour, and except this correction is made in her story, it will contradict both Mr. Powell's evidence, and that of the gardener, according to whom, Sir Theodosius died at eight o'clock, which was an hour after she had administered the draught. It is also deducible from this correction, that the Court had no proof of any convulsive symptoms appearing in less than forty-seven minutes after the draughts, though it seemed generally understood in evidence of the medical gentlemen, that they appeared immediately: So that in two essential circumstances by taking the symptoms from the obvious tenour of Lady Boughton's evidence alone, false conclusions might be drawn.

On his cross examination, Mr. Willmer says expressly, "that the appearances of the body in the putred state in which it was when he had an opportunity of observing it, could give him no information to form an opinion upon, respecting the cause of death." How void of penetration must this witness have been, when the ingenious Dr. Rattray could deduce from these very appearances how mankind, not one cause of death alone, but two different and contradictory ones.

He next is questioned concerning epilepsies, and gives the following account of them, "they are of two kinds, primary or symptomatic. It happens sometimes, that without the least previous notice, a man in the most perfect state of health, in the midst of pleasure, or engaged in business, as Suetonius says of Julius Cæsar, may in a moment be seized with the epilepsy, his senses will leave him; he will fall down, *be convulsed, foam at the mouth*, his tongue will be black, and he may either die or recover. As to the symptomatic epilepsy, I can speak from experience: a patient of mine had a violent pain and humour in his finger; as soon as the pain, which gradually went up his arm, reached the armpit, he fell down epileptic and convulsed. But if, previous to an epilepsy, the patient heaves very much at the stomach, and shews signs of sickness, I should conclude the cause of that epilepsy was in the stomach."

He then mentions the blood that was found in the thorax, and being asked if that could occasion convulsions, says, "I do not know; but if I might be allowed to reason from analogy, I should conclude it would, for in all slaughtered animals, when the blood runs out from them in a full stream they lie quiet, but they never die without convulsions: the loss of blood will evidently occasion convulsions." This passage merits particular attention, for we find here all the symptoms described by Lady Boughton explained, by a cause fully competent to produce them, the existence of which was manifest upon opening the body.—Her Ladyship first observed, that the draught produced sickness, and the patient struggled much to keep it down, now in an involuntary effort to reach, and a voluntary effort to restrain it, nothing is more probable than that a blood vessel was broke—So natural a conjecture once formed, every appearance concurs to support it; the blood runs out first in a full stream, and the symptom consequent upon that is precisely what Mr. Wilmer here describes, for he "laid quiet," or as her Ladyship expressed it, seemed inclined to sleep.—He afterwards fell into strong convulsions, and these we now find loss of blood will occasion; for that animals dying from that cause never expire without them.—Thus every symptom preceding the death of Sir Theodosius Boughton indicated the rupture of a blood vessel; and what are the appearances on dissection? not one of any consequence or singularity, but *a quart of extravasated blood in the thorax*; an indication almost strong enough in itself alone to decide, that the cause of death was no other than this we have supposed, and which would have led any impartial anatomist to form that opinion.—It is impossible to contemplate all these circumstances, and not shudder at the effects of prejudice; for no man I am sure, will doubt, that had the body been opened without a suspicion of poison, the death would have been ascribed to the rupture of an artery, and that opinion being afterwards compared with the symptoms preceding dissolution, would have been held incontrovertible to this hour; instead of that, the operators, fully prepossessed that poison was the cause of death, fought only for argument to support that opinion, and laid no stress on any appearances however strong, of a contrary tendency; but for Mr. Wilmer, in all probability, this extravasation of blood had never been heard of, while the most common symptoms of putrefaction, a slight redness on the coat of the stomach, and even a casual taste in the mouth of a person standing by, were thought of the last importance.—Were any other argument necessary to show that the judgment of the anatomists, especially that of Dr. Rattray, was governed wholly by

by prejudice. I need only observe, that the Doctor pronounced arsenic to have been the poisonous substance administered, merely because he had heard that a quantity of that mineral had been found at Lawford Hall, though it is not in the nature of mineral poison to produce such sudden effects as those his opinion went to explain.—Happy would it have been in this case for Mr. Donellan, and just it would be in my apprehension on all such occasions in future, if the anatomists were totally ignorant of previous suspicion, and required to discover the cause of death without any data but the appearances of the body on dissection. It is much to be regretted, if Dr. Rattray and Mr. Wilmer were, as the Doctor states, totally unacquainted with the cause of the operation when at Lawford Hall; that it was not then performed, and had Mr. Donellan wilfully kept them in their ignorance, the contrary of which I have shewn, he would have displayed much prudence, but no want of candour in that conduct.

There are some more passages in Mr. Wilmer's evidence material to the cause, which as this argument grown so voluminous already, I shall transcribe for the reader's observation without a comment.

Q. You were there on the 4th and the 9th of September—did you find any reluctance or unwillingness on the part of the prisoner to the body's being opened? A. Not the least in the world. Q. Did he not seem rather desirous of having it opened? A. I believe it was at his own request that a man was sent for to unfold the coffin. Q. Was any thing said about your going to Sir W. Wheeler the next day? A. I heard a conversation between the prisoner and Dr. Rattray, I cannot at this distance of time speak accurately to matters which appeared then to me trifling; I believe he asked Dr. Rattray, whether he should see Sir W. Wheeler—I think *Dr. Rattray said, he believed he should, and would give him an account of the business.*

Dr. Ashe was the next witness called, and he, without having seen the dissection, or knowing any thing more on the subject than what had been stated by the evidence, corroborates the opinion of Dr. Rattray. His testimony goes no farther than this, except to ascertain what was not questioned, that laurel water is poisonous; I will therefore comment upon it no further than to say, that if the reader is a medical man he may be as competent a judge of this case as Dr. Ashe, by looking at the printed trial; if not, he will weigh deliberately the opinion of a man whose name, in all probability he has never heard before, against that of the celebrated *Hunter*.

Dr. Parsons was next sworn, and informed the court, that he was professor of anatomy at Oxford.—He gives an opinion grounded entirely on the evidence of Lady Boughton, that the draught she administered occasioned the death of her son, and that it contained laurel water.—His reasons for thinking so are given very diffusely, but as I observed respecting the last witness, are formed entirely with these materials of which thereader is already possessed.—It is to be observed, however, that he does not, like Dr. Ashe draw any inference from the appearances of the body after death, but seems to lay those entirely out of his consideration, as unworthy the least regard.

Dr. Parsons was questioned concerning epilepsies and apoplexies; the account he gives of those disorders is perfectly correspondent with Mr. Wilmer's; but on his cross examination he says, that the latter seldom attacks people so young, and so thin, as Sir Theodosius Boughton.—Being asked, if they do not sometimes attack people in perfect health, he returns this answer; "Yes, apoplexy, proceeding from repletion on the sudden bursting of a blood vessel may; epilepsy may proceed from a variety of causes partial or general, in the head or elsewhere; but very seldom I believe proves so suddenly fatal." Q. Might not these have happened to Sir Theodosius Boughton? A. There can be no doubt of the *possibility* of their attacking him; but I think there is no reason to go so far for a cause as to *possibility*, when this medicine, as all the world knows, will effect it.—Surely there never was more wretched reasoning than this! The counsel immediately exposes its fallacy; "That is, assuming as a fact (replies he) that Sir Theodosius took two ounces of laurel water," &c. And how does the professor vindicate his own logic? by flying from the argument altogether; for this is his very singular answer, "Much less quantity would be sufficient for the purpose if we may credit Dr. Rattray's account."—It is conspicuous here, and in a hundred other instances, from the medical evidence of the prosecution, that the Doctors were aware, however reluctant to acknowledge it, of an apoplexy being likely to produce all those symptoms described by Lady Boughton, and to define that disorder properly from a distinction made by Dr. Parsons, it might have been a symptomatic apoplexy proceeding from the bursting of a blood vessel.

Mr. Samuel Bucknill was now called, and deposed, that he went to Lawford Hall the day after Dr. Rattray had been there; that he saw Mr. Donellan, and told him, "he was ready to open the body, or at all events to take out the stomach, if it would be any satisfaction to the family; but that he was not permitted to do so, for which Mr. Donellan assigned the following reason; "That Dr. Rattray and Mr. Wilmer had been there, and had declined opening the body, and it would not be fair in him or us to do any thing after men so eminent in their profession had declined it, had said it was impossible."

Admitting this account of Mr. Bucknill's to be full and accurate, I cannot see in what Mr. Donellan's behaviour was exceptionable.—He had made no objections to having the body opened by Dr. Rattray and Mr. Wilmer, but on the contrary, as appears by the evidence of the latter, had been extremely desirous of having the operation performed: but when these gentlemen had pronounced, that it would be attended with danger, and that of course, in some degree to the family, as well at the operators, when they had declared too, that it would be impossible at so late a period to discover the cause of death, I can

not think it was incumbent on him to let the body be dissected by a stranger, a man he had never seen before, or heard of, merely because he offered to do it.—Mr. Bucknill is quite a youth, and whatever knowledge he may have in his profession, I am told his appearance does not bespeak it; it was natural enough therefore for Mr. Donellan to conclude, that foolhardiness and ambition had led him to propose what he was not fully competent to perform; now if his own character, or that of the family, was concerned in the event of the dissection, he would have been extremely incautious not to take care that the operator was a man of ability. Let us suppose that Mr. Bucknill's proposal had been embraced; that he had opened the body, discovered a natural cause of death, and declared his opinion accordingly; still the public would not have been satisfied; for his reputation was not great enough to give his opinion much weight, even with the candid and judicious, while slander would not have failed to suggest that it was formed by sinister motives, and not the result of conviction.—In my judgment, therefore, if Mr. Donellan said what is here stated, he spoke the language of prudence and propriety; but his attested case gives an account of this conversation very different from Mr. Bucknill's—I shall here transcribe it.

“ Soon after Mr. Donellan had sent the abovementioned letter, (a letter to Sir W. Wheler) a Mr. Bucknill, surgeon at Rugby, called upon him at Lawford, and said he had understood, that he, Mr. Donellan, wished to have the body of Sir Theodosius opened—Mr. Donellan replied, that it was his wish to have it done, and that Dr. Rattray, Mr. Wilmer, and Mr. Powel, had attended the preceding evening for that purpose, but found it in so putrid a state, that they thought it not only unsafe to attempt it, but impossible at that time to form any opinion with respect to the cause of Sir Theodosius's death; Mr. Bucknill laughed at this, and said, that “ they were country practitioners, but that the matter of opening the body *would be a posy to him.*” Mr. Donellan thinking this a cox-comical expression, turned round, and could not help smiling, which Mr. Bucknill, observing, was very much offended at, as Mr. Donellan has since been informed, and which may in some measure account for the active part he has taken to the prejudice of Mr. Donellan in this business: but before they parted, Mr. Donellan, nevertheless, told Mr. Bucknill, that though Dr. Rattray had declined opening the body, and also notwithstanding the carpenter and plumber had just finished folding and fastening up the coffins, yet it was still his wish to have the body opened; and if he (Mr. Bucknill) would take the trouble to wait upon Sir William Wheler and obtain his consent to its being done, he would have the coffin again unfastened, and think himself obliged to him to undertake the matter; but said, “ that as he (Mr. Donellan) had till then acted strictly conformable to Sir William's directions, he did not at that period of time like to do any thing without them.”—Mr. Bucknill then left him.

This witness mentions being a second time at Lawford Hall, on the day following, in consequence of a message from Sir W. Wheler; which is a strong presumption in favour of what Mr. Donellan asserts, viz. his being referred to that gentleman. “ Sir William had sent him word, that he and Mr. Snow, together, were to open the body—Accordingly when he saw Mr. Donellan, the first question was, “ if Mr. Snow was come,” and he received for answer, that “ he was not;” after which, Mr. Bucknill says, the following conversation ensued: “ Pray, Sir, have you received any message or letter from Sir W. Wheler?” He said “ he had;” I told him, I had received a verbal message from Sir William Wheler to meet Mr. Snow there, and we were to get Sir Theodosius Boughton's body into the garden, or any convenient place we thought proper, and to open it:” Capt. Donellan said, that he had then written to Sir W. Wheeler, and likewise to Coventry, to the gentlemen of the faculty there, and he then waited Sir W. Wheler's further orders.”

Mr. Bucknill was asked if he was permitted at that time to open the body, and, in his answer, plainly admits, that there was no objection made to his doing so; for he says, that he was obliged to attend a patient at two miles distance from Lawford Hall, and went away for that reason; but he had not proceeded a mile before a messenger, dispatched on horseback from Lady Boughton's, overtook him upon a full gallop, and told him Mr. Snow was come; he returned for answer, “ that he would be back in an hour,” and went forward to see his patient. He came back, he believes, within the hour, and asked Captain Donellan if Mr. Snow was gone; the Captain replied he was, and he had given them orders what to do, according to which orders they were proceeding; he added, “ I am sorry you should have given yourself all this unnecessary trouble,” upon which the witness rode away.

From all these particulars, taking them literally as stated by Mr. Bucknill, I must still remain of opinion, that Mr. Donellan's conduct was natural, proper and consistent, through the whole transaction.—When the witness first called he did not refuse his permission to open the body; but, in conformity to Sir W. Wheler's request, it was necessary to stay for the arrival of Mr. Snow; mean time he had written to Sir William for further instructions, concerning which we shall speak more at large by and bye.—During the absence of Mr. Bucknill Mr. Snow arrives, gives directions, and departs; and Capt. Donellan, in conformity to these directions acquaints the witness on his return, “ that his trouble had been taken to no purpose.”

But to understand this more fully, and particularly what Mr. Snow's directions were, let us resort to the attested case where the whole is thus related:

“ —The

“ —The next morning, being the 6th of September, and the 8th day after Sir Theodosius's death, Mr. Donellan received a letter from Sir W. Wheler in answer to that he had sent the morning before, in which letter Sir William says, that, according to his (Mr. Donellan's) letter of the preceding morning, he expected to have seen or heard from the gentlemen who attended on Monday evening to open Sir Theodosius, but had been disappointed; and added, that as he had been informed a Mr. Bucknill of Rugby, had said he would undertake to open the body, he would desire Mr. Snow to call upon him, and take him with him to Lawford; and recommended it to Mr. Donellan to let them open the body, in case they should attend for that purpose—Immediately on receipt of this letter Mr. Donellan determined to have the body opened, in case Mr. Bucknill and Mr. Snow should attend; and waited in expectation of seeing them, but was at a loss to account for the reason that Dr. Rattray had not then been with or sent to Sir W. Wheler; and in order to have the same explained, sent a note that morning to Mr. Wilmer, who wrote for answer, that Dr. Rattray was out of town, but that he expected him home that night, and as soon as he should come they would go to Sir William.—Mr. Donellan, as was before mentioned, was waiting from the time he had received Sir W. Wheeler's letter in expectation of seeing Mr. Bucknill and Mr. Snow, the plumber and carpenter being then there ready to open the coffins.—About three o'clock in the afternoon Mr. Bucknill arrived, when Mr. Donellan immediately asked him, if the men should begin to open the coffin? he said, “No, not till Mr. Snow should come, and expressed some surprise at his not being there, as he said he had appointed to meet him at that time punctually; Mr. Bucknill waited some time, and then told Mr. Donellan, that he could not wait any longer then, but would call again, and desired Mr. Snow might wait, if he should come in the mean time; Mr. Donellan pressed him very much to stay, in the presence of at least thirty of the tenants, who were then there ready to attend the funeral; the same having been previously fixed for that day, but in vain.—Mr. Snow waited a considerable time for Mr. Bucknill's return, and on his not coming, told Mr. Donellan, he could not stay any longer; upon which Mr. Donellan proposed that the coffin should be opened, and that he (Mr. Snow) should proceed to open the body; but Mr. Snow declined it. Mr. Donellan again pressed the same, saying, that as most of the people who were invited to the funeral, were tenants, and lived at no great distance, they would attend again on a future day: whereupon Mr. Snow requested to speak with the women who had sat up with the body, and also with the plumber and carpenter; and after questioning them in private with respect to the state of putridity the body was in, and being told by the plumber, that every time he folded and unfolded the leaden coffin, he was obliged to make it so hot that he could not touch it without burning himself; he told Mr. Donellan that he could not think of complying with his request, and recommended it to him, by all means, to have the body buried that night, saying, that he was sure Sir W. Wheler, on a representation of the circumstances would approve of it, and particularly as the tenants were all then there and ready; notwithstanding which Mr. Donellan was still reluctant; which Mr. Snow observing, actually gave orders himself in the presence and hearing of all the tenants that the body might be buried; and accordingly the same was buried about seven o'clock that evening in the family vault at Newbold.—Soon after Mr. Snow departed, Mr. Bucknill arrived; but on finding that the former was gone, he directly went away again, and appeared glad to do so.”

Such is the account given by Mr. Donellan of the transactions at Lawford Hall on the evening of the funeral; but the learned counsel did not think proper to cross examine Mr. Bucknill.—Part of what relates to Mr. Snow, was contained in the paper called a defence, which the prisoner delivered to be read in court; and the judge, in summing up the evidence, seemed to admit it would have deserved some consideration if proved; but he justly remarked, that as it rested only on assertion, it ought not to weigh with the jury—He particularly observed, that Mr. Snow himself had not been called, and seemed to think that circumstance a conclusive argument, that what the prisoner advanced was untrue.—To know the cause of this omission I have enquired of the solicitors, and am informed by them, that Mr. Snow was expected to appear as an evidence for the crown, and therefore was depended upon to prove these facts on cross examination, for which purpose, ample instructions were given in the proofs.—Mr. Newnham did not enquire if he was in court, nor avail himself of other witnesses equally competent to support this part of the case on cross examination, whom he was expressly directed to examine; indeed the learned gentleman seems to have thought his brief a mere work of invention from beginning to end, and therefore would not bring it to the test of evidence.

William and Samuel Frost were the next witnesses examined; their testimony contains nothing material, but what we have already seen in commenting upon that of Lady Boughton.

Mary Lynes proved that there was a still in the house at Lawford Hall, kept in a room which was called Captain Donellan's, that the Captain frequently distilled roses therein, but nothing else to her knowledge.—This circumstance of having a still in his possession cannot afford any reasonable ground of suspicion against Captain Donellan, for that *was an implement belonging to the house* before he came there, and nothing could be more natural, than, in a life of retirement and leisure, to use it as an amusement.

Francis Amos, the next witness, deposes something relative to this still which was thought a material circumstance. “He (Mr. Donellan) brought me a still to clean, says he, two or three days after Sir Theodosius died; it was full of lime, and the lime was wet.” This lime was supposed to have been used to take off the smell of the laurel water, but is it not incredible that Mr. Donellan should be so
extremely

extremely considerate in that precaution, and yet so blind to prudence immediately afterwards, as to expose the matter to a servant rather than take the trouble of cleaning the still himself? Surely such contrary qualities cannot consistently be ascribed to the same person!—In the attested case this affair is completely explained with every appearance of probability; I shall transcribe the passage.

“It has also been further propagated about the country, that Mr. Donnellan made use of a still; that he distilled poisons in it, and in order to prevent a discovery, had put lime into the same.—He acknowledges he had a still; but never used it for any other purpose than that of distilling lavender and rose waters; and as to the matter of putting lime and water into it, he did that merely to destroy fleas; he likewise put lime and water into a bucket, and other things as well as into the still, and the reason of his using the still at all upon that occasion was, it being nearer at hand than any thing else; when he had put the lime and water into these things he placed the same under his child’s bed, and his own; and frequently wet the bedstead with the water, as the women servants can testify. But what puts the matter beyond a doubt is, his putting lime into *the pot or bottom part of the still only*; for if he had done it with an intention of taking off the smell of any particular poison, he should have put it into the upper part of the still as well as the lower.”

It is singular enough, that the learned Counsel, having such instructions in his brief, did not ask the witness, in his cross-examination, into what part of the still the lime was put.

Another circumstance related by Francis Amos, is the following, “that in the evening after the death of Sir Theodosius Boughton, Mr. Donnellan came into the garden, and said to him—Now, Gardener, you shall live at your ease, and work at your ease; it shall not be as it was in Sir The’s days. I wanted before to be master, but I have got master now, and shall be master.” If this is to be construed as a reprehensible turn of thought on the melancholy event then recent, I shall readily subscribe to that opinion; and yet it is a fault of which human nature is generally susceptible on such occasions: it would have been strange, indeed, if a brother-in-law should have been much dejected, when a mother, if Mr. Donnellan’s Case may be credited, was scheming to profit by the harsh dispensation of Providence, before the body was yet cold. But if these expressions are thought to be an evidence of guilt in the speaker, that is a construction I must clearly dissent from: Never yet, I believe, was a murderer known to reveal his crime by open exultations; on the contrary, he puts on the mask of sorrow, and hypocritically deplores that event of which he is the author. But it is necessary through the whole of this trial, to believe, if we admit the criminality of the prisoner, that he was at one moment the most crafty, premeditating villain in the world; at the next, the most shallow and inconsiderate. I must observe, before we quit this subject, that the expressions here stated could not have relation to the property or estate of the deceased; for in them it has already been shewn Mr. Donnellan acquired no right by his death, and as for Lawford Hall, it belonged to Lady Boughton; so that the words could only refer to that rivalry and competition which must naturally subsist in her ladyship’s house between her two nearest male relations. “I shall be master now;” that is, Sir Theodosius can dispute the direction of the family with me no longer.

This witness also deposed, that on the morning of Sir Theodosius’s decease, Mr. Donnellan came and told him, “he must go and take a couple of pigeons directly.” The witness answered, “there were none fit to eat;” on which Mr. Donnellan said, “It will make no odds if they are not, for they are for Sir The; we must have them ready against the doctor comes,” and then added something about the disorder, which we have seen in another place. He complied with these directions, but as he went into the house with the pigeons, he met Lady Boughton and Mrs. Donnellan at the door; they were wringing their hands, and said, “it is too late now, he is dead.” On his cross-examination he says, Mr. Donnellan spoke to him about eight o’clock, and the ladies came out in a few minutes after.

The Judge in summing up the evidence, entirely mistook the nature of this fact. He conceived the pigeons were to have been killed and dressed for Sir Theodosius to eat; consequently that the prisoner’s order was an absurdity, and intended to hide his knowledge of the young Baronet’s situation. “He had just seen him, says the Judge, in a dying state; to what cause then can we attribute his ordering pigeons to be killed, and got ready at such an hour as ten o’clock?” Here, upon a suggestion from the Counsel, he corrected himself, and explained to the Jury the true cause of this order to the gardener: It is a very prevalent, though absurd custom, in the country, to split a couple of pigeons while they are yet alive, and apply the insides of them warm to the feet of a dying person, which, it is supposed, will often be the means of reviving him; for this purpose Mr. Donnellan ordered the pigeons to be brought in, and that the ladies perfectly knew for what they were designed, appears by their words to the witness, “It is too late now, he is dead.” The learned Judge, therefore, corrected himself in this; but did not dismiss the fact without an unfavourable construction, immediately adding, “that though Sir Theodosius was dying at eight o’clock, the pigeons were not to be had till ten.” Now whence his Lordship derived that circumstance, I am at a loss to determine; for I have recited the whole evidence of the gardener relative to the pigeons, and the reader will see he said nothing like what is here stated, but the direct contrary. “He was ordered, he says, to get them immediately,” and in compliance with that order, actually brought them into the house in a few minutes. The learned Judge, therefore, was certainly mistaken; but the prisoner’s

prisoner's counsel having corrected him immediately before, thought perhaps it would be rude to do so again. His Lordship seemed also to think that the pigeons were not, in fact, ordered for the purpose of applying them to the feet, because it did not appear in Lady Boughton's evidence, that any thing was said about them in the bed chamber. If the reader can discover the force of this inference, his penetration is much greater than mine; for Mr. Donnellan might have been impressed with a faith in this experiment himself; or it might have been suggested to him by the family below stairs, or it might have been proposed above, though her ladyship forgot to give it in evidence; and this last is the most probable, as it appears from the expressions of her ladyship and Mrs. Donnellan at the door, that they were apprized of the pigeons being ordered. Nothing can more strongly portray that ardour of prosecution which operated against this unhappy gentleman, than a circumstance, trivial likethis, being brought in evidence against him, to furnish so forced and unnatural a conclusion. Even had the Judge been correct in stating the evidence, to what does it amount? Can it reasonably be thought that the prisoner would endeavour to prepossess the servant with an opinion, that Sir Theodosius's situation was unknown to him, and in the same breath declare that he was dying?—But to insist longer on this subject would be insulting the reader's understanding.

William Crofts, one of the jurymen on the coroner's inquest, was next sworn, and deposed, "that when lady Boughton, on her examination, said, Captain Donnellan had rinsed the bottles, he caught her by the gown, and gave her a twitch." This is a circumstance which, I believe, weighed much against the prisoner; but if the explanation of it which the unfortunate gentleman solemnly attested with his last breath may be credited, nothing could be more innocent than his conduct on this occasion. I shall transcribe his account of it from the printed Case. "When Mr. Donnellan waited upon the coroner and jury, the coroner asked him if he chose to remain in the room while the witnesses were examined? He replied, that he had no objection; accordingly he continued in the room during the examination of the witnesses, and in the course of lady Boughton's evidence, when she spoke of her daughter's maid telling her that Mr. Donnellan was not at home, she spoke *maid* so low, that Mr. Donnellan did not hear it; and thinking she said *her daughter*, he pulled her by the sleeve, and told her she had made a mistake, for her daughter (Mrs. Donnellan) was not up at the time, whereupon lady Boughton recalled her words, and said, she meant her daughter's maid. This (continues the Case) was the whole Mr. Donnellan meant by pulling her ladyship's sleeve, but the same has been construed by the malicious very invidiously against him."—It is impossible for the public certainly to know, between these two different stories, which is the true one; but it is not difficult to imagine that the jurymen who took notice of this incident may have mistaken at what part of her evidence it happened; and it is rather singular, that her ladyship, who was most competent to know the fact, was not examined at all about it. We have just seen that the Judge drew an inference against the prisoner from an omission of her ladyship's, and surely, with at least as much justice, one may be here taken in his favour; for it seemed as much her wish, as it was her duty, to declare every thing she knew that could support the prosecution.

The next witness called was *John Darbyshire*, a prisoner for debt in Warwick gaol, who swore to several conversations between Mr. Donnellan and him, wherein he gave various accounts of his brother-in-law's death, sometimes ascribing it to poison, and sometimes the contrary, but always protesting his own innocence.

The learned Counsel for the prosecution, in preparing the minds of the Jury for this evidence, stated what he knew was absolutely necessary to give it any just effect, viz. "that the conversation to which Darbyshire would speak was pressed upon him by the prisoner, though repeatedly cautioned by the witness to avoid it." Had this been true, no doubt, in point of candour, his testimony would have been unexceptionable; but so widely different was the fact, that Darbyshire himself swears, the expressions of Mr. Donnellan were made in answer to questions from him. Here then is a species of evidence which humanity revolts at, and which the courts have always been most scrupulous of receiving—the evidence of a spy, an informer, who professes friendship to the unfortunate, merely to betray them.

This man, by his own account, slept in the same room with the prisoner, and used to acquaint him with what he heard, then ask questions, and so draw him inadvertently into conversations about the

death of Sir Theodosius Boughton; surely then if Mr. Donnellan had at such times actually let fall any thing tending to criminate himself, from the lips of such a witness it would not merit much attention; but if, instead of that, we find nothing in Darbyshire's evidence inconsistent with his innocence, it ought to operate strongly in his favour, for he has in that case passed the ordeal of inquisitive treachery unhurt, has fostered a snake in his bosom, and escaped without a sting. Now, what do we find here deposed? Why, that Mr. Donnellan has, at different times, professed various opinions on the cause of Sir Theodosius's death! Is it strange then, that his judgement on this subject should vary, when that of every gentleman in the county of Warwick, the prosecutors and their violent partizans excepted, must frequently have done the same? In the course of seven months confinement, he received much information concerning that melancholy event; he finds the physical gentlemen all holding one opinion, and a variety of circumstances, all leading to another; his ideas, therefore, fluctuate between the two, and he is at a loss which of them positively to receive; Is this an evidence of guilt? If so, it will apply to thousands as well as Mr. Donnellan; but, on the contrary, it is a strong presumptive proof of his innocence; for knowledge of the fatal event and its cause would have fixed his opinion, but incertitude made it waver.

Derbyshire also swears to something the prisoner had said relative to a letter received by Lady Boughton.—If these words were actually spoken, the reader will find an explanation of them in Mr. Donnellan's brief. If such a letter was received, it was no doubt highly injurious to her Ladyship, but the matter is not material to our question.

On the cross examination of this witness, some matters were discovered not much to his credit, but I think it would be superfluous to say any thing of his character after viewing the complexion of his evidence against the prisoner.

The last witness called on the part of the prosecution was *Sir William Wheeler, Baronet*, who proved the identity of eight letters that passed between the prisoner and himself relative to the death of his ward.—The reader has already seen something of these in the former part of the evidence, but it will be proper now to notice them more particularly.

The first is a short note from Mr. Donnellan, dated, August 30th, informing the baronet of the melancholy event that had taken place that morning.—An imputation arose on this against the prisoner, because he omitted to say therein that the death was sudden, though he mentioned that the deceased had been under the care of Mr. Powell for a venereal complaint. But in answer to this it must be observed, that however instantaneously Sir Theodosius was seized on the morning of his death, the event was not wholly unexpected, nor had he been in health for months before. However, I do not mean to contend that this note was properly worded to explain completely the manner of his death; it was evidently written in a hurry, and as he mentioned that the deceased had been under the care of Mr. Powell, it would seem that he referred to that gentleman for further particulars.—We must suppose Mr. Donnellan the weakest of mankind, if we believe that he hoped to conceal the particulars of this event from Sir William Wheeler, who lived only at eight miles distance, and was so nearly connected with the deceased.

The second letter is a short complimentary note from Sir William, in which he expresses himself in the most friendly manner, and says, “the *sudden* and very *untimely death* of my poor unfortunate ward gives me great concern.” It is evident from this that he either fully understood the nature of Sir Theodosius's death from Mr. Donnellan's note, having perhaps known his previous state of health, or that if information on the subject came to him from any other quarter, he did not conceive there was any wilful evasion in Mr. Donnellan's words; otherwise he would have asked for further particulars, and in all probability not expressed himself so politely as he did, especially as this note was dated September 2d, and he had heard a suspicion of poison the day before.

The third is also from Sir William, and is dated September 4th. In that he intimates to Mr. Donnellan the suspicions of the country, and his wish that the body should be opened, to gain the families consent to which he argues very strenuously, and adds, that Mr. Powell, who is then with him, seems to be

as desirous of the operation as himself. He recommends the body to be opened by Mr. Wilmer or Mr. Snow, in presence of Dr. Rattray, or any other Physician.

It is this letter which Mr. Donellan is blamed for not producing to the medical gentlemen at Lawford Hall, a defence of which has been already given. His answer is in these words :

“ Dear Sir,

“ I this moment received a letter from you by Mr. Powell, which I communicated to Lady Boughton, and my wife, and we most cheerfully wish to have the body of Sir Theodosius opened for the general satisfaction, and the sooner it is done the better ; therefore I wish you could be here at the time.

I am, &c. &c.

Lawford Hall, Sept. 4.

JOHN DONELLAN.”

Here is no reluctance shewn on the part of Mr. Donellan ; but every expression is such as a man ardently desirous of having the operation performed would use. He could then have no project to prevent the operation by evasion and deceit, for Sir William himself is solicited to be present.

This produced another letter from Sir William Wheeler, professing his great satisfaction at the concurrence of the family with his request, but declining to be present himself ; he says, that in his opinion none but the faculty should be present ; that one surgeon, a physician, and Mr. Powell should attend as soon as possible, and concludes, “ I hope you understand that it is not to satisfy my curiosity, but the public, that I wished to have this done, and to prevent the world from blaming any of us that had any thing to do with poor Sir Theodosius.”

Here is contained every thing mentioned in the preceding letter of Sir William's, relative to his motive of desiring the operation, (as we have remarked before) only in fewer words therefore, it is plain that when Mr. Donellan put it into the hands of the Doctor, he could not intend to deceive him in that respect ; but this has been pointed out more at large in another place, and I hope it will not be denied, when the reader recollects that Mr. Powell was present with the other medical gentlemen, that Mr. Donellan in no wise frustrated opening the body on September the 5th, or concealed Sir William Wheeler's sentiments. But he has been suspected of meaning to convey to Sir William, by a letter written immediately after the doctor and surgeon went away, that the body had actually been opened. This I must again remark, implies that Mr. Donellan was the most absurd of mankind, for could he possibly imagine that any misrepresentations of his could conceal what was known to so many, and concerning which Sir William would unquestionably make the strictest enquiries ? But supposing it possible he should be so totally destitute of thought and judgment as this, still we have it in Mr. Wilmer's evidence, that he asked Dr. Rattray to call on Sir William, and that gentleman promised to do so ; could he then think of sending false representations in his letter, when he expected they would be contradicted within a few hours ? Improbable as these suppositions are, they have been made to avoid the necessity of admitting that a few words apparently ambiguous might be so through accident or inattention. The words here alluded to, are the following : “ I sent for Dr. Rattray and Dr. Wilmer ; they brought another gentleman with them : Mr. Powell gave them the meeting, and upon the receipt of your last letter, I gave it to them to peruse, and act as it directed. The four gentlemen proceeded accordingly, and I am happy to inform you that they fully satisfied us, and I wish you would hear from them the state they found the body in, as it will be an additional satisfaction to me, that you should have the account from themselves.”—The first passage here, which was supposed to contain misrepresentation, is that wherein he says, a fourth gentleman was present. But though Dr. Rattray was pleased to mention only Mr. Powell, Mr. Wilmer, and himself, as the medical people who attended on that occasion, it is notorious that Mr. Joseph Rawn, an assistant to Mr. Wilmer, came with them from Coventry, and went up stairs with them to view the body.

“ On the receipt of your last letter, (says Mr. Donnellan) I gave it to them to peruse, and act as it directed.”—“ Mark the fallacy of this, (said Mr. Howarth in his opening) “ For my part, I cannot see
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in what the fallacy consists : the language is no way ambiguous, and can only admit of one possible acceptance. But the learned Council stated, that the second letter was a mere complimentary one, containing no directions, no instructions, and upon a perusal of which they were furnished with no ideas for their conduct." Let any man attend to the passage I have before transcribed from this letter, and say if the learned Gentleman fairly stated its contents ?—Was it no direction to say that a physician, a surgeon, and Mr. Powell, were to be the medical people present, and were to attend as soon as possible ? Was it no instruction when Sir William desired that they should be alone together ? Were they furnished with no ideas for their conduct, when they were told by the letter, in effect, tho' not in words, that the body was suspected to be poisoned, that it was requisite to have it opened for the family's honour, and the public satisfaction ? Dull indeed must have been the comprehensions of that man who could read the second letter and not gather from it at once all that the first more diffusely contained. Mr. Howarth says, the perusal of it would give no ideas, &c. but Dr. Rattray is unwilling to rest his credit upon that position, for he admits only having *glanced it over*. The last expression in this part of Mr. Donnellan's letter, which has been construed against him is this, " The four Gentlemen proceeded accordingly, and I am happy to inform you they fully satisfied us." As this passage actually impressed Sir William with an idea that the body had been opened, it must be admitted, that it has an ambiguity : But the question is not, Whether Mr. Donnellan's style was a good one ; or whether this language was the most accurately adapted to the meaning of any he might have hit upon ; our business is only to examine, whether the ambiguity was intentional or otherwise : Now, I have already shewn what strong improbabilities we must assume to suppose the former : Let us attend, however, to the words themselves : " They proceeded accordingly," that is, according to Sir William's last letter ; which was literally true, as far as they thought fit to proceed at all. " They have fully satisfied us." Most undoubtedly they had so, by giving all the satisfaction the nature of the case would admit ; the family had shewn great alacrity in endeavouring to have the body opened, therefore if the faculty pronounced it impossible to discover the cause of death, and declined the operation, suspicion was as much wiped away as possible, and there was no reason they should be dissatisfied. But the words immediately succeeding these last are sufficient in themselves to refute every imputation of this kind, without a single comment : "*I wish you would hear from them the state they found the body in, as it will be an additional satisfaction to me that you should have the account from themselves.*"

After this Mr. Donnellan proceeds in his letter to give some account of the disorders under which Sir Theodosius had laboured for many years ; and though it has been supposed that he thereby more plainly indicated a wish to deceive Sir William Wheeler, it seems to me a clear indication of the contrary ; for the analogy between the preceding part of the letter, and this, could only have been, that as it was impossible for the medical Gentlemen to discover the cause of death by dissection, he would furnish the best conjectural grounds he could, for the Baronet's satisfaction. The account he here gives I have already proved to be literally true.

Lady Boughton, in her evidence, says that the prisoner read this letter to her before it was dispatched, and that she objected to it ; but being asked if she assigned any reason for her disapprobation, admits she did not. " She thought it would be of no use ; that it would be unnecessary to send it ; therefore told him he had better let it alone, and not send such a letter as that." Nothing could be a stronger proof, that no deception was intended in the letter by Mr. Donnellan, than his reading it to a person who would infallibly detect the falshood, if there was one ; for Lady Boughton knew what had been done by the medical Gentlemen as well as himself ; but she discovered no deception in the contents, and only objected to sending it as unnecessary, because Dr. Rattray had promised to wait upon Sir William with the same information therein conveyed. Mr. Donnellan however thought politeness required him to write, and therefore was not governed by her Ladyship's opinion.

Sir William concluding, from the tenor of this letter, that the body had been opened, rested satisfied ; but on Wednesday morning, being undeceived, wrote an answer to Mr. Donnellan, which is the seventh letter in the evidence. In this he mentions the mistake he had been led into ; that he had not seen the faculty, but heard that they found the body in so putrified a state, that they thought it not safe to open

it. He also heard of Mr. Bucknell's offer; and if he and Mr. Snow would perform the operation, he recommended by all means to let them do it. In a postscript he adds, "If Snow is from home, I do not see any impropriety in Bucknell's doing it, if he is willing. I will send Snow to Bucknell, that if Bucknell should be gone to Lawford-hall, he may follow him."

It is evident, from the tenor of this letter, that if Mr. Snow could attend, Bucknell was not to proceed without him; consequently Sir William's request was punctually complied with, as has appeared in our comments upon Bucknell's evidence. But Mr. Donnellan surprised to find these new instructions from Sir W. Wheeler, and learning by the letter, that they came in consequence of his not hearing from Dr. Rattray, or Mr. Wilmer, dispatched an immediate answer, dated Wednesday, a quarter before ten o'clock, representing to him, that the funeral had been fixed for three o'clock that day, and that the coffin was soldered up; that he had sent to Dr. Rattray to wait upon him immediately, and that he must beg his further orders, whether the funeral should be deferred or not.

As the house of Sir William Wheeler is eight miles from Lawford-hall, it was objected to this last letter of Mr. Donnellan's, that the answer could not arrive time enough to stay the funeral. Perhaps it could not, if the first time fixed was to be adhered to, but it plainly appears to have been his intention, that the funeral should be delayed till the return of his messenger. In the mean time, however, Bucknell and Snow arrived; and we have seen already by what means the operation was prevented. There were witnesses subpoenaed to prove, that Mr. Snow declared, "*he would not open the body for Theodosius's estate*;" and the reader will recollect, that the interment took place at last upon his earnest solicitation, or rather his orders to the bearers. Now this gentleman being Sir William's own apothecary, and particularly informed of his sentiments, Mr. Donnellan could not, with propriety, refuse to be governed by his opinion.

We have seen, that this part of the defence was rejected by the Judge, because Mr. Snow was not called as a witness for the prisoner; but the cause of that omission has been assigned; and when it is considered, that the Council for the prosecution had not that diffidence of their case, or reluctance to examine evidence, which was apparent on the other side, perhaps it will make in our favour that Mr. Snow was not called by them; for it clearly appears that he was at Lawford-hall previous to the interment, and had he been prevented by Mr. Donnellan from dissecting the body, his evidence would have been more conclusive on this head than that of Mr. Bucknell, or any other witness of the crown. His not being called, therefore, though subpoenaed, creates a strong presumption, that the fact really was what Mr. Donnellan has stated.

The evidence of Sir William Wheeler went no further than the proof of these letters; but on cross-examination, he swore, that he knew Sir Edward Boughton, father of Sir Theodosius, and that he died suddenly as he was walking home.

In justice to this worthy Baronet. I cannot omit here to observe, that not only in his testimony, but his whole conduct in the course of the prosecution, he displayed the greatest candour; and that whatever opinion may be held of the question we are investigating, even if the unhappy gentleman shall be thought innocent, of the crime he suffered for, still Sir William Wheeler will meet applause, both from his own heart and the public, for the part he has acted. In his breast, zeal for justice did not suppress the feelings of humanity; but the character of the prosecutor was blended with those of the gentleman and the christian; he interposed his influence to soften the rigour of Mr. Donnellan's imprisonment, and sent him copies of those letters he meant to give in evidence on the trial.—These facts I have from the authority of the solicitors, and thought it would be unjustice to an amiable character not to mention them.

I have only now left, to notice a letter from the Prisoner to the Coroner and his Jury, on their second meeting, which was the last matter given in evidence for the prosecution. Mr. Donnellan, by the tenor of this letter, thought it his duty to give every information relative to the melancholly event of Sir Theodosius's death, in addition to what had been obtained by the evidence of Lady Boughton and others

at the first meeting : he therefore mentions a variety of facts, which I shall not give in detail, but all to this effect, that the young Baronet had been much addicted to the use of poisons for killing fish, and other purposes ; and that the family had such an apprehension of the consequences, that they had avoided, for a considerable time, to eat of what he was known to touch.

Certainly a man of more prudence than Mr. Donellan would have foreseen the construction likely to be put on so officious a communication as this, and had he possessed the smallest share of legal knowledge, he would have known that his letter could not be read as evidence ; consequently his conduct here was extremely absurd ; but if there is no falsehood or misrepresentation in the account he gives, I cannot see that it was any proof of criminality. In consequence of the dissection, and Dr. Rattray's declared opinion, it was then universally believed that Sir Theodosius had been poisoned by arsenick. Now, Mr. Donellan knowing, that large quantities of that poison were constantly used by the young Baronet, readily inclined to the general opinion, and of course was anxious it should be known, that in all probability he might have been poisoned by accident. Accordingly he states in his letter, that Sir Theodosius bought arsenick by pounds at a time, and this was confirmed by Lady Boughton. But this was not the only poison he used, as will appear from the following fact, which is copied literally from the proofs annexed to Mr. Donellan's case.

“ Thomas Hewitt, of Lawford, miller, will prove, that in August last, Sir Theodosius asked him to make up a composition of *occuli indicus berries*, &c. which he told him he meant to make use of for taking fish ; that he accordingly bought one ounce of *occuli indicus berries*, some spirits of wine, and some lavender drops, and mixing and boiling the same together, poured it into a phial of about four ounces, and then gave it to Sir Theodosius ; that Sir Theodosius put the same into his pocket, and that he, Hewitt, did not see or know what he afterwards did with it ; he told Sir Theodosius never to make use of it, except when he was present, and Sir Theodosius promised he never would ; that lately Lady Boughton sent for him to Lawford, and shewing him a bottle half filled with a fluid, asked him, if that was the composition of *occuli indicus berries*, which he prepared for Sir Theodosius ? That he told her Ladyship he thought it was the same bottle, and that he had the greater reason to think so, because the top of the same was bent, having some idea the bottle he gave Sir Theodosius was bent at the top in like manner.”

It would be surprising, if instances of the same kind were not now familiar to the reader, that the prisoner's Council should omit calling Hewitt to prove these facts ; for it is certain that *occuli indicus berries* would produce the same effects as those ascribed to laurel water. Mr. Donellan's assertion, that the family would not eat after Sir Theodosius, was said on the trial to be untrue ; there was no ground, however, for discrediting it but Lady Boughton's evidence ; and let us see what she says on the subject.—“ Mr. Donellan recommended to me not to drink out of the same cup with him (Sir Theodosius) because he was affected with a venereal disorder ; nor to touch the bread he did, because there might be arsenick about his fingers, as he used to put arsenick for his fish.”

Q. But no such attention was paid as to things brought to table to eat ?

A. No.

Here then it appears that this suggestion to the Coroner and Jury was not a mere effort of invention, but that a caution to that effect had actually been given by Mr. Donnellan ; and a very proper one it unquestionably was : that it had been attended to, therefore was natural for him to imagine, though not easy to know with certainty ; however, as Lady Boughton was to be present on the second meeting of the Inquest, it is impossible to doubt that he was convinced of the truth of this assertion, for he would not have made it, if sure to be immediately contradicted.

We have now seen the whole body of the crown evidence ; and, before we proceed to examine what has been proved to counterbalance it, I would beg the reader to pause awhile, and pronounce, whether taken by itself, without the shadow of a defence on the part of the prisoner, it was sufficient to draw down the severest sanction of the law on the head of this unfortunate man. Here we see circumstantial evidence in its worst colours, vague, ambiguous, and deceitful ; often founded on false conceptions of the

the witness, still oftener on wilful misrepresentation, one fact depending on another, but both inconclusive, and both frequently erroneous. Here we see contradictory qualities ascribed to the same person, and his criminality must sometimes be inferred from the uniformity of his conduct, sometimes from its inconsistency; but where no rational principle whatever could explain his behaviour as resulting from the consciousness of guilt, there *fatality* must be supposed to govern, and impell him to supply the means of detection. Surely then, had those facts here interspersed been proved on the trial, and that light been thrown on the crown evidence which the publication of Mr. Donnellan's case has offered, no humane mind could have convicted him, nor even put him on his defence.

We have partly seen already how much might have been proved on the part of the prisoner; but let us now see that evidence on which the wisdom of the Council thought proper to rest his life.

The first witness called for him was Mr. *Andrew Miller*, Post-master at Rugby, who proved that Mr. Donnellan was sent for to his house, on account of a quarrel that happened between Sir Theodosius Boughton and a Mr. Wildgoose; that he came over, and acted in such a manner as to prevent their fighting.

Mr. *George Leggie* swore to a fact of the same nature, when the young Baronet had a quarrel with Mr. Chartres, a clergyman. Both these incidents were also proved by Lady Boughton on her cross-examination, and two others, in which her son was likewise prevented from fighting by the intervention of Mr. Donnellan, one at Bath, and the other at Rugby.

It is quite unnecessary to point out the tendency of this part of the evidence, for the feelings of the reader have already anticipated every comment I could make: Nothing could be a more conclusive answer to an accusation like this, wherein the prisoner was supposed to have concerted schemes against the life of his brother-in-law, by long premeditation, than shewing that instead of seeking to destroy that life, he had often laboured to preserve it. But there was another instance, though not given in evidence, wherein Mr. Donnellan actually preserved the life of the young Baronet, at the imminent hazard of his own: It is thus related in the attested case, "Sir Theodosius happening once to be with Lady Boughton and Mr. Donnellan, at the Rev. Mr. Parker's, of Newbold, asked him for the key of the church, saying he wanted to go to the top of it. Mr. Donnellan, knowing how careless he was, thought it would be imprudent to let him go alone, therefore went with him. When they had reached the top of the church, Sir Theodosius wanted to get up to the weathercock, to try if he could turn it; Mr. Donnellan dissuaded him from the attempt, but he persisted in making it, and accordingly did so. Just as he reached the top, his foot slipped, and had not Mr. Donnellan caught him in his arms, he must have been inevitably killed. The blow that Mr. Donnellan received on his breast upon this occasion, by Sir Theodosius's falling full upon it, was so violent, that it turned him sick immediately afterwards, which (it is added) is a circumstance well known to Lady Boughton, who must also recollect Sir Theodosius's telling her the whole affair, in the coach, as they returned home, and saying that "he must have been killed, if his brother had not saved him."

Her ladyship's memory, however, was not so tenacious as the case here supposed, for, upon her cross-examination, she could only recollect that her son actually went up to the top of the church, and nothing of the danger he was in.

The last and most material witness called for by the prisoner, was Mr. *John Hunter*, a gentleman, whose great anatomical knowledge is so universally celebrated, that to say any thing of his character, would rather seem to detract from, than describe it. He is confessedly the first in his profession, and an ornament to his country. This gentleman, in direct opposition to Doctors Rattray and Ashe, gives the following decided opinion on the appearances of the body, after death, as described by the evidence "that the whole of them explain nothing but putrefaction." He is then asked,

Q. Are

Q. Are the symptoms that appeared after the medicine was given, such as necessarily conclude that the person had taken poison?

A. *Certainly not.*

Q. If an apoplexy had come on, would not the symptoms have been nearly or somewhat similar?

A. *Very much the same.*

Q. Have you ever heard of a young person dying of an apoplectic or epileptic fit?

A. Certainly; but with regard to the apoplexy not so frequent, &c.

The next passage in Mr. Hunter's evidence relates to the properties of laurel water, and the analogy between the effects of poisons in human bodies, and in those of brutes; there seems nothing so immediately in point in his ideas on those subjects, that we need transcribe them; but in answer to some questions immediately afterwards, he gives some rules for dissection, which it would be injurious to the learned Dr. Rattray to pass over in silence.

Q. If you had been called upon to dissect a body, suspected to have died of poison, should you not have thought it necessary to pursue your search through the guts?

A. Certainly.

Q. Do you not apprehend that you would have been more likely to receive information from thence than any other part of the frame?

A. That is the track of the poison, and I should certainly have followed that track through.

Q. You have heard of the froth issuing from Sir Theodosius's mouth, a minute or two before he died; is that peculiar to a man dying of poison, or is it not very common in many other complaints?

A. I fancy it is a general effect of people dying in what you may call health, in an apoplexy, or epilepsy, in all sudden deaths, where the person was a moment before that in perfect health.

Q. Have you ever had an opportunity of seeing such appearances upon such subjects?

A. Hundreds of times.

Q. Should you consider yourself bound by such an appearance to impute the death of the subject to poison?

A. No, certainly not: I should rather suspect an apoplexy, and I wish in this case the head had been opened to remove all doubts,

Q. If the head had been opened, do you apprehend all doubts would have been removed?

A. It would have been still farther removed, because although the body was putrid, so that one could not tell whether it was a recent inflammation, yet an apoplexy arises from an extravasation of blood in the brain, which would have laid in a coagulum. I apprehend that though the body was putrid, that would have been much more visible than the effect any poison could have had upon the stomach or intestines.

Q. Then in your judgement, upon the appearance the gentlemen have described, no inference can be drawn from thence that Sir Theodosius Boughton died of poison?

A. *Certainly not, it does not give the least suspicion.*

After these extracts from the evidence of Mr. Hunter, it would be impertinent and unnecessary to say any thing further on the medical question; for if the vast experience and abilities of this Gentleman challenge more credibility to his opinions than those of the country Physicians, we must be convinced, that neither by the symptoms preceding death, nor the appearances of the body upon dissection, was there any reason to conclude that poison had been administered.—I confess myself astonished to find the learned Judge, in his charge, dealing out medical authorities by tale, and inferring that Mr. Hunter must be in the wrong, because there were four against him. In questions of fact, indeed, such a mode of considering the evidence might be very proper; for one man's testimony in those points, is, generally speaking, entitled to as large a share of credibility as another's; but, in matters of opinion and professional knowledge, a hundred heads of country Physicians should not weigh against Mr. Hunter.

This Gentleman was very closely cross examined, in order to extort from him, if possible, an opinion that the draught was the cause of death, because the symptoms immediately ensued after taking it: a long series of questions were put to him in different forms, but all to the same purport, viz. "You have heard the symptoms described, now what, in your opinion, was the cause of death?" And his answer to them all was uniformly this: "It is impossible for me to give a decided opinion on that subject;

subject; I have said laurel water might produce those symptoms, but an apoplexy would certainly "produce the same; consequently every man is as good a judge as I am, which of the two causes did "in fact operate." Surely no answer could be more fair and explicit than this, nor should any other have been required of a medical man; for the Jury had here every possible degree of information before them; they were told that two different causes might have produced the symptoms before death, and that the appearances after it were of no consequence whatever: which of the two causes to adopt therefore they were to learn from the evidence; and the questions, so artfully put to Mr. Hunter, were in fact the issue upon which it was their province to decide. It is true, the medical witnesses for the prosecution had taken upon them to give a positive opinion, that the draught contained poison; but at the same time they held that nothing but poison could produce the symptoms described: Mr. Hunter, on the contrary, points out different causes, each fully competent to explain the symptoms; and therefore for him to follow the other Gentlemen in giving a decided judgement either way, would have been highly disingenuous. It is astonishing then to find the learned Judge stating in his comments on the evidence, that Mr. Hunter had only given his *doubt* in opposition to the positive testimony of the others. What, was it only a doubt to say, that anoplexy would certainly produce all the symptoms given in evidence, or was it a doubtful judgment, that the appearances after death arose entirely from putrefaction? The former medical witnesses had given their opinions, that the facts in evidence necessarily concluded the draught to have been poison; Mr. Hunter gave his, that those facts did not of necessity lead to such a conclusion. Surely then the one is an opinion full as positive as the other.

The reader is now fully possessed of the evidence on both sides; that is, of all that the indefatigable zeal of the the prosecutors could adduce against the prisoner, and all that the policy of his council would permit him to offer in his defence. Nothing material has been knowingly omitted on either side, and the answers here given to the Crown-evidence, whether satisfactory or not, are founded upon facts which there is every reason to believe could have been proved on the trial. It remains only to form a rational dispassionate judgment on the whole; in doing which, let it be again observed, that we do not impeach the discernment or humanity of the Jury, whose verdict decided on the fate of this unhappy man; for we reason on a body of evidence, more extensive, and better understood, than that on which their opinion was founded.

This Case, as the learned Judge observed, comprehends two distinct questions, "Whether the deceased Baronet died by poison? and if so, Whether Mr. Donnellan was the murderer?" I shall consider them separately but not so closely imitate his Lordship, as to supply the defects of evidence applied to the one, by a reference to the other.

How then let us first enquire, has that fact, which is the essential basis of the accusation against Mr. Donnellan been established? Not by any proof that poison was in fact contained in the phial, but by the opinions of certain medical gentlemen built on the evidence of Lady Boughton, and the appearances of the body on dissection: as to the latter foundation, or rather confirmation of their opinions, it hardly deserves notice, for of the four medical gentlemen who were present at the operation, only one thought those appearances indicated poison, and an authority, superior to any in Europe, has decided, that they are the necessary, the general attendant of putrefaction; except therefore the anatomical knowledge of Dr. Rattray, and that of Dr. Ashe, who seems, on a description of the appearances, to hold the same opinion, are he put in competition with that of Mr. Hunter, those appearances have thrown no light whatever on the subject, have given no materials to form an opinion, or to confirm one already formed, but are to be rejected entirely as nugatory, and foreign to the point in question. Dr. Rattray, indeed thought them consequential; but when was he impressed with that opinion? not at the time of the dissection, for he only says, they lead to his conviction in consequence of their analogy, to the internal appearances of other bodies poisoned by laurel-water; and this comparative estimate of them could not have been made on the 9th of September, for at that time he had tried no experiments, at that time he made no mention of laurel-water, or any other vegetable poison, but ascribed the death of the subject to *arsenick*, a poison which in the time

and manner of its operation, is totally dissimilar to the other. It was not therefore the obvious and immediate indication of those appearances, to the eye of his consummate knowledge that led to the opinion he delivered on the trial, but it was an analogy afterwards discovered between a body dissected while yet warm, and a body eleven days dead, in the last stage of putridity. And what are the points of similitude between them? Only one; and in that, they by no means closely correspond; there is an appearance of inflammation in the stomach of the human subject, and in the lungs of the others, which the learned Doctor ascribes to a peculiar property of laurel water, that of driving the blood out of its natural channel. Thus we find, that the only indication of poison was also an indication that laurel water was the baneful substance; how then in the name of common sense, if that adjuration has any force on Dr. Rattray, how will he account for his first opinion on this subject. Arsenick has not this blood-impelling property; No! that is the peculiar characteristic it seems of laurel water; his analogous inference could not therefore apply to the effects of arsenick; then what led him to believe at first that the deceased had taken this species of poison, or that his death was occasioned by any violent means whatever? But to insist longer upon this, would be trifling with the patience of the reader; for Mr. Wilmer, who attended the dissection, totally disregarded those appearances; Mr. Powell, who also attended, gave no opinion concerning them; Mr. Bucknill, the operating surgeon, is also silent on this subject; Dr. Parsons, a professor of anatomy, gives his judgment without any reference to the dissection, which, had it thrown any light on the question, he indubitably would not have done; and finally Mr. Hunter, whose experience and abilities are equivalent to thrice as many, and as great authorities as all those I have enumerated, absolutely pronounces that they are explanative of nothing but putridity. These therefore, are all evidences against the judgment of Dr. Rattray, whose testimony, to say no worse of it, carries in itself its own refutation.

With respect to the second ground of the medical opinions, the symptoms preceding death, let it be well observed, that here the facts are no otherwise ascertained than by the evidence of Lady Boughton, and how far her accuracy is to be depended upon, we are now pretty well able to determine; we have seen that in points of the most serious importance she has grossly contradicted herself, on different examinations; that her testimony on the trial was full of inconsistencies, and highly improbable, in a word, that it was almost charitable to say she could remember nothing with precision. But as to her description of the symptoms, we need not resort to the general complexion of her evidence to prove it could not be relied on; for I have already shewn it to be grossly erroneous, in a circumstance the most consequential of any. When therefore an opinion rests upon facts furnished by her Ladyship, it rests on fallacious grounds indeed. Some of these symptoms I allude were attested by other witnesses, who have more pretensions to credibility, but from the time of administering the draught till the coming on of those convulsions that ended in death, Lady Boughton only was present in the bedchamber, and from her account we can only derive information during that important interval. I have observed in one consequential point, her account was proved to be erroneous, alluding to the time that elapsed between swallowing the draught, and its supposed fatal effect; there was however another error of still greater magnitude, that claims particular attention. No circumstance related by her Ladyship so decisively led the judgment of the faculty to those opinions they delivered, "as that of the draught smelling like bitter almonds." This she swore on the trial was her immediate sensation on smelling to it, and that she declared it to her son; but I have shewn that not only this material circumstance was suppressed in her examinations at the Coroner's Inquest, but that she then described the flavour of the medicine in a manner quite opposite to this.—Shall we then rather credit her memory in its remote than its recent suggestions, or can we believe it possible, that if her Ladyship had at the time this peculiar idea of bitter almonds, she could have forgotten it when she twice before described the smell of the medicine?—Surely it is more natural to conclude, that this similitude was first imagined when the flavour of laurel water was made known to her by the faculty, and when perhaps they pressed her so closely to describe specifically the smell of the draught, that the force of imagination at last supplanted memory, and substituted the chimera of suspicion in lieu of her own actual perceptions.

Enough has been proved to shew that opinions drawn from the tenor of her Ladyship's story, could not be substantial or conclusive, even had the faculty been unanimous in their judgment; but rather conjectures

tures founded on uncertainty and error. Supposing however the symptoms to have been fairly, impartially, and accurately stated; still how very questionable are the opinions of Dr. Rattray and his followers? They determine that the draught was poison, because its smell resembled laurel water, because that liquid would occasion the effects described, and no natural cause whatever could produce similar ones. Now in the two first, they reason unfairly, assuming that the specific poison must have been laurel water, in order to prove that the draught was deleterious, an assumption which Dr. Rattray should blush at. But as to the principal support of their opinion, the impossibility of any natural disorder producing the symptoms described, there the evidence of Dr. Hunter positively contradicts them, for he says, that both apoplexy and epilepsy would have produced the same. On the whole, therefore, we see that neither by fact nor fair reasoning has it been ascertained that Sir Theodosius Boughton was poisoned; but towards the contrary opinion we have these striking circumstances-- "that apoplexy would have produced death *with the same symptoms*, that Sir EDWARD BOUGHTON, his father, *died by that disorder, and that it is hereditary*."

Thus much for the first question in this case, a negative solution of which would have been a complete answer to the indictment; but if the exposure of contradiction, falsehood, and absurdity, has not perfectly erased from the reader's minds those impressions which medical presumption or prejudice may have written on it; let us briefly review the other circumstances given in evidence, and see how far they have fairly criminated Mr. Donellan, even allowing that his brother-in-law died by poison.

First, as to the motive that could induce this gentleman to commit a murder so horrid, deliberate, and unnatural, what was it? An interest to be derived from the death of Sir Theodosius? That was the popular idea, but that I have shewn could not be the case. * Was it then resentment or malice? Impossible! no enmity subsisted between them, on the contrary we have seen Mr. Donellan in several instances anxious for his safety, often preserving him from danger, and once absolutely saving his life at the hazard of his own. A crime, therefore, at which humanity revolts, must have been perpetrated, if at all, without an end to be obtained, without a motive to impel, without a passion to be gratified, but in opposition to his own interest, against the tenor of his former feelings, and in violence to every emotion by which the human heart is actuated. And what are the other circumstances that should lead us to embrace a paradox like this? to bring them all again in view would be tedious repetition; but I trust they have all been either satisfactorily explained, disproved, or the adverse inferences drawn from them refuted. He was charged with falsely representing the ill health of the deceased, but it has been shewn, that every assertion on that subject was strictly true. He was charged with endeavouring to prevent an enquiry into the cause of his death; but it has been shewn, that as long as the enquiry was likely to be efficacious, he endeavoured to promote it; and, even after the faculty had declined the operation, evinced a willingness to have it performed, to the very hour of the interment.—We have seen too, that the corpse was kept eight days unburied in the hottest season of the year, though in a state of high putrefaction. He was charged with rinsing the phial to prevent a discovery of its contents, but this circumstance, as far as it is hostile to Mr. Donnellan, rests on evidence absolutely incredible, and has received a most satisfactory explanation. Finally, he was charged with betraying, in various instances, a consciousness of guilt, but those have all been minutely considered, and both his conduct and expressions appeared reconcilable with the natural behaviour of innocence under the eye of suspicion. What then remains to the vindication of his character? what post has calumny taken in which she has not been defeated? That he purchased or prepared any poisonous substance, that he conveyed any such into the phial, or was even seen near the room of the deceased, that he endeavoured to fly from the hands of justice, that he made any confession of guilt, or betrayed the smallest symptom of terror; neither of these have been proved, tho' common incidents to circumstantial evidence; and the contrary of most of them is notorious.

I will venture to pronounce, that if the charge in the indictment was true, and the circumstances given in evidence, with the adverse constructions affixed to them could be depend upon, in the annals of human life there never before existed such a character as Mr. Donnellan. Who ever heard of a man atrociously

* It has been absurdly stated that Mr. Donellan would have acceded to two livings, worth 500l. per annum, had his brother-in-law lived to be of age; and the Boughton estate, about two ve hundred a-year of which descended to Mrs. Donellan, he was precluded from any interest in by his marriage settlement. But besides this, there was a mortgage on that estate of 7000l. so that considering the present interest of money, it was not actually worth so much as the livings.

guilty, yet possessing all the peace, and all the intrepidity of innocence; at one time cautious in the extreme; at another irrationally thoughtless; sinning most unnaturally without a motive; murdering with the weapons of a coward, and betrayed by the terrors of detection into the most puerile evasions, yet scornful to escape from the hands of justice, when that was the only means of safety; meeting the dreadful tribunal undisconcerted, and dying with perfect heroism.

We have reasoned hitherto only upon the evidence that preceded conviction, upon those external indications of the heart, by which human reason can only explore its secret recesses. The records of conscience are inscrutable to our eyes, and in the conduct of a man are often imperfectly transcribed. Upon the clearest and most positive evidence, therefore, we are often led to form erroneous judgment. But there is an indication of the mind so strong and solemn, that nothing but omniscience could more credibly convey to us its impressions. Such is the last declaration of a dying man, given under the certainty of death. But here let us not be understood to mean the professions of an infidel, a man already dead to sensibility, who resigns his being in a callous indifference to all things, neither fearing nor hoping for futurity, nor those of a man, who, in the hopes of a pardon, asserts his innocence as a plea for it. To the words of characters like these, little attention should be paid; but not so with the man who, fully conscious that death is inevitable, and neither wishing or expecting the contrary, sets his eyes on heaven, and calls on that Deity, into whose presence he is going, who is the avenger of falsehood, to attest the truth of his protestations, who dies with the piety of a Christian and shews no other solicitude for this world, but that his innocence may be believed when he is no more.

In every point this is descriptive of Mr. Donnellan; he submitted to the sentence of the law with perfect resignation; he expected no reprieve: he spent the interval between his sentence and execution mostly in penitence and prayer; he died a Christian in every respect; yet uniformly, solemnly, and eagerly protested his innocence to the last.

Can we conceive a man so horridly impious, as to put on the mask of devotion, that his dying words may gain the greater credit? It is not in the depravity of human nature to account for such a character; for of all terrestrial passions, the desire of leaving a blameless reputation behind us after death, is the most generous, and indicates the most, a mind fraught with sensibility; surely such a one would not die with falsehood in his lips; much less would he draw down divine vengeance on his head, to reconcile himself with the opinions of mankind. But that Mr. Donnellan's devotion was sincere, and unaffected, will appear from an anecdote, which I have on the authority of Mr. Webb. Two attendants were placed in the room with him, to prevent his taking any means of destroying himself; but it was soon found he had no intention of that kind, and the men were on the point of falling asleep in the night before his execution. Mr. Donnellan concluded they were actually sleeping, and immediately threw himself upon his knees, in which posture he continued praying fervently a considerable time, they still affecting sleep, not to interrupt him. From this, and the whole tenor of his behaviour, it cannot be doubted that he had set his mind on eternity, and that the fortitude with which he died was that of a Christian, not of an Atheist.

The reader is already apprised, that, together with a declaration of his innocence, this unhappy Gentleman left a paper with one of his Solicitors, as the instrument of his exculpation to the public. On that paper this defence is founded, which I shall now conclude with professing that I have been actuated by no improper or partial motives; that I was not acquainted with Mr. Donnellan, nor know any of the parties immediately interested, except the Solicitors; but public justice is the interest of every man; and when there is reason to apprehend that an individual has fallen unmeritedly a victim to the laws of his country, it is incumbent on every member of that society, whose collective energy gave the blow, to make him the only possible recompence, by endeavouring to restore his posthumous character, and the honour of his family.



PROCEEDINGS in the TRIAL

O F

JOHN DONNELLAN, ESQUIRE,

By way of Supplement to the preceding CASE, in order to render References unnecessary to any other Publication.

LIST OF THE GRAND JURY.

The Hon. W. William Hewitt, Foreman.	
Tho. Biddulph, Esq.	C. P. Packwood, Esq.
G. Townshend, Esq.	John Halifax, Esq.
T. W. Knightly, Esq.	R. A. Johnson, Esq.
Matthew Wise, Esq.	Joseph Charles, Esq.
Miller Sadleir, Esq.	John Mallony, Esq.
Christ. Wren, Esq.	Joseph Boulton, Esq.
Bertie Greathead, Esq.	Edward Pallas, Esq.
John Grieve, Esq.	J. Nobbins, jun. Esq.
Thomas Webb, Esq.	P. S. Littleton, Esq.
Tim. Goodwin, Esq.	

John Webb, Esq. Sheriff.

JUSTICE BULLER's Charge to the Grand Jury.

" Gentlemen of the Jury,

I am extremely pleased at your meeting me so early this session, as by your timely attendance I hope I shall be able to get through the business of the county, in the course of the week; and I am the more satisfied at this circumstance, as I perceive your calendar extremely loaded indeed, and that it actually contains a longer and heavier list of crimes, than I have found charged in the calendars of seven counties.

Amongst these, I find some in particular, which require no inconsiderable attention; and the first, of consequence, which stands in the list, is such as may depend on circumstances only.—It is a crime of so peculiar a nature, that it is generally committed with the greatest secrecy, and over which the offender always makes use of every art and cunning to throw a veil. It is your duty gentlemen, to throw off this veil, and sift the business to the bottom. You are not to expect visible proofs in a work of darkness. You are to collect the truth from circumstances, and little collateral facts, which, taken singly, afford no proof, yet put together, to tally with and confirm each other, that they are as strong and convincing evidence, as facts that appear in the broad face of day.

In this case, gentlemen, you will have two objects to consider: First, whether the deceased did die of poison? Secondly, whether the person suspected did assist in administering the poison?—With respect

to the first of these considerations, you will, no doubt, hear the sentiments of those who are skilled in the nature and effects of poison, which is of various sorts, and most subtle in its operation. From the information of such persons, you will be able to form an opinion upon the effects which different poisons have on *different* persons; and also of the effects the *same* poisons have on persons of different habits and constitutions. But in this enquiry, gentlemen, the opinions of such persons are not to *controul*; they are only to assist your determination; and, if you find it necessary to enquire whether any, and what means were used to secrete any circumstance that might lead to more certain evidence. It will also be proper for you to enquire into the state of health, in which the deceased had been previous to, and at the time of this unfortunate affair: Whether he was well, or indisposed; and if indisposed, *what* medicines were prescribed for him, and *by whom*.

If you find he did get his death by poison, the next case is, to consider, who gave him that poison; where poison is *knowingly* given, and death ensues, it is *wilful murder*; and if one is *present* when poison is given by another, he is not an *accessary*, but a *principal*.

There are two ways, by which the law considers a person as present in such cases. There is an *actual*, and a *constructive* presence. To be *actually* present, is to be in the room with, and within sight of the person when the poison is administered. To be *constructively* present, is to be in the house, knowing and assenting to what is done.

There are cases, in which, a man may be an hundred miles off, and give poison to another, to administer to a third. Here the person who administers the poison, if ignorant of the intention, *is not guilty*; but the person who gave it for that purpose, though at so great a distance, is guilty of murder.

I will here mention one case, in which, a person gave poison to another, to administer to a third; but the person to whom he gave it for that purpose, knowing, as well as he did, that it was poison, then it was determined, that the person who so gave it, was not a *principal*, but an *accessary before the fact*.

I must also observe to you, that if an *innocent* medicine is changed for a *noxious* medicine, by substitution, he who changes it is guilty of murder if the person die. If the indictment should state, that the deceased died by any particular poison, and it should appear upon enquiry, that he died of another sort of poison; I am to inform you, that the difference is immaterial, with respect to the law; it being held sufficient in such case, that the deceased was poisoned.

It is also proper to remark to you, that the crime of murder, by means of poison, has ever been considered as the most odious of all crimes, as it is a species of murder, of a nature that implies peculiar premeditation; and in former times was held of so horrid a nature, that the persons found guilty of it, were boiled to death in water or in lead, though at present the crime and punishment stand undistinguished. But whilst I am thus describing the odious and horrid nature of this species of murder, it is necessary to caution you against applying your detestation of the crime itself, to the person accused of it. It is not your place to enquire into his immediate guilt, or innocence;—it is for you merely to enquire, whether there is sufficient ground of suspicion to put him on his trial, and call on him to prove his innocence.

There are two other causes of murder to come also before you, on which it may be necessary for me to say a few words. The one is where death is caused without any direct act, or by indirect means, in which there is malice implied, as by starving, for instance; or, as when a prisoner dies by duress of a gaoler; in such cases it is murder. Also when a child is exposed to the inclemency of the weather, and of consequence dies; or, if a pauper, by the vexatious removal of parish officers, die of cold, the law decides that there is malice implied, and the crime is murder.

So, in the second case, if two men go out together, without any design to commit murder, though with intent to commit some other felonious act, and one of them, in that pursuit, should kill a man, they are both principals in murder; for the previous design of committing felony carries with it the implied malice, which in law constitutes the crime.

Two other cases will also come under your cognizance with respect to a burglary, and a burglarious entry. The one is for breaking open a house in the night, and stealing goods: this is common burglary. The other is for breaking open a house in the night *without stealing* any thing out of it: this is also burglary; and the difference to be made between them is merely in the *form* of the indictment, which will state the burglarious act, to have been committed with *intent to commit felony*. In this case you will consider what was the intention, and by that you will form your decision.

I have thought it necessary, gentlemen, to throw out these few hints for your information upon those cases, that appear to me to require some observation; and I shall be happy if you find them useful in directing your proceedings in the arduous duty to which you are called by your country."

LIST OF THE COUNCIL.

For the CROWN.

Mr. Howarth,
Mr. Wheler,
Mr. Guest,
Mr. Balguy,
Mr. Digby,
Attorney, Mr. Caldecott, *Rugby*.

For the PRISONER.

Mr. Newnham,
Mr. Green,
Mr. Dayrell,
Attorneys, Mr. Edward Inge, *Jun. Coventry*.
Mr. Webb, *Coventry*.

I N D I C T M E N T.

WARWICKSHIRE.

The Jurors for our lord the king, upon their oath present, that JOHN DONELLAN, late of the hamlet of Little Lawford, in the parish of Newbold upon Avon, in the county of Warwick, Esq. not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, and feloniously, wilfully, and of his malice aforethought, devising and intending Sir Theodosius Boughton, Bart. to poison, kill, and murder, on the twenty-ninth day of August, in the twentieth year of the reign of our Sovereign lord George the Third, by the grace of God of Great-Britain, France, and Ireland, king, defender of the faith, &c. with force and arms at the hamlet aforesaid, in the parish, and in the county aforesaid, a certain quantity, to wit, *two drachms of arsenic*, (being a deadly poison) feloniously, wilfully, and of his malice aforethought, did put, infuse in, and mix together with water, (the said John Donellan then and there well knowing the said arsenic to be deadly poison) and that the said John Donellan, the said arsenic so as aforesaid put, infused in, and mixed together with water, into and in a certain glass phial bottle of the value of one penny did put and pour, and the said glass phial bottle with the said arsenic put, infused in, and mixed together with water as aforesaid contained therein, then and there (to wit) on the same twenty-ninth day of August, in the twentieth year of the reign of our said lord the king, with force and arms at the hamlet of Little Lawford aforesaid, in the parish of Newbold upon Avon aforesaid, in the said county of Warwick, feloniously, wilfully, and of his malice aforethought, in the lodging room of the said Sir Theodosius Boughton, did put and place, in the place and stead of a certain medicine then lately before prescribed and made up for the said Sir Theodosius Boughton, and to be taken by the said Sir Theodosius Boughton; he, the said John Donellan, then and there feloniously, wilfully, and of his malice aforethought, intending that the said Sir Theodosius Boughton should drink and swallow down into his body, the said arsenic, put infused in, and mixed together with water as aforesaid, contained in the said glass phial bottle, by mistaking the same, as and for the said medicine so prescribed and made up for the said Sir Theodosius Boughton, and to be by him, the said Sir Theodosius Boughton taken as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Sir Theodosius Boughton, not knowing the said arsenic put, infused in, and mixed together with

with water as aforesaid, contained in the said glass phial bottle, so put and placed by the said John Donellan, in the lodging room of the said Sir Theodosius Boughton, in the place and stead of the said medicine then lately before prescribed and made up for the said Sir Theodosius Boughton, and to be taken by him the said Sir Theodosius Boughton in manner aforesaid, to be a deadly poison, but believing the same to be the true and real medicine then lately before prescribed and made up for, and to be taken by him the said Sir Theodosius Boughton afterwards (to wit) on the thirtieth day of August, in the year aforesaid, at the hamlet of Little Lawford aforesaid, in the parish of Newbold upon Avon aforesaid, in the said county of Warwick, the said arsenic so as aforesaid put, infused in, and mixed together with water by the said John Donellan as aforesaid, contained in the said glass phial bottle, so put and placed by the said John Donellan in the lodging room of him the said Sir Theodosius Boughton, in the place and stead of the said medicine then lately before prescribed and made up for the said Sir Theodosius Boughton, he, the said Sir Theodosius Boughton, did take, drink, and swallow down into his body, by means of which said taking, drinking, and swallowing down into his body of the said arsenic, so as aforesaid put, infused in, and mixed together with water by the said John Donellan as aforesaid, he, the said Sir Theodosius Boughton, then and there became sick, and distempered in his body, of which said sickness and distemper of body, occasioned by the said taking, drinking, and swallowing down into the body of the said Sir Theodosius Boughton, of the said arsenic so as aforesaid put, infused in and mixed together with water by the said John Donellan as aforesaid, he, the said Sir Theodosius Boughton, on the said thirtieth day of August, in the year aforesaid, at the hamlet of Little Lawford, in the parish of Newbold upon Avon, in the county of Warwick aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Donellan, him, the said Sir Theodosius Boughton, in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did poison, kill, and murder, against the peace of our said lord the king, his crown and dignity.

Second Count.

And the jurors aforesaid, upon their oath aforesaid, further present, that the said John Donellan, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, and feloniously, wilfully, and of his malice aforethought, devising, and intending to kill and murder the said Sir Theodosius Boughton, with a certain poison called arsenic, on the said 29th day of August, in the said 20th year of the reign of our said lord the king, with force and arms, at the said hamlet of Little Lawford, in the said parish of Newbold upon Avon, in the said county of Warwick, knowing the said poison called arsenic to be deadly poison, feloniously, wilfully, and of his malice aforethought, did mix and mingle the said poison, called arsenic, in water, and that the said John Donellan, feloniously wilfully, and of his malice aforethought, did put and pour the said poison called arsenic, so as aforesaid mixed and mingled in water into and in a certain glass phial, and the said glass phial, with the said poison, called arsenic, so mixed and mingled in water as aforesaid contained therein, then and there, (to wit) on the said 29th day of August, in the 20th year aforesaid, at the hamlet aforesaid, in the parish aforesaid, in the county aforesaid, feloniously, wilfully, and of his malice aforethought, did put and place in the lodging room of the said Sir Theodosius Boughton, in the dwelling house of Dame Anna Maria Boughton, widow, there situate, with intention that the said Sir Theodosius Boughton should, take drink, and swallow down into his body the said poison called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial. And the jurors aforesaid, upon their oath aforesaid, further present, that the said Sir Theodosius Boughton, not knowing the said poison, called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial, to be deadly poison, afterwards (to wit) on the 30th day of August, in the 20th year aforesaid, at the hamlet aforesaid, in the parish aforesaid, in the county aforesaid, did take, drink, and swallow down into his body, the said poison, called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial, by means of which said taking, drinking, and swallowing down into the body of him the said Sir Theodosius Boughton, of the said poison called arsenic so as aforesaid, mixed and mingled in water by the said John Donellan as aforesaid, he the said Sir Theodosius Boughton then and there became sick and distempered in his body, of which said sickness and distemper of body, occasioned by the said taking, drinking, and swallowing down into the body of the said Sir Theodosius Boughton, of the said poison called arsenic so as aforesaid, mixed and mingled in water as aforesaid by the said John Donellan as aforesaid, he the said Sir Theodosius Boughton afterwards, to wit, on the

said

said thirtieth day of August, in the twentieth year aforesaid, at the hamlet aforesaid, in the parish aforesaid, in the county aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Donellan, in manner and by the means last aforesaid, feloniously, wilfully, and of his malice aforethought, did poison, kill, and murder the said Sir Theodosius Boughton, against the peace of our said lord the king, his crown and dignity.

PRISONER'S DEFENCE.

Prisoner. My Lord, I beg leave to have this read, putting in a written defence, which was read as follows:

My Lord, and Gentlemen of the Jury,

Permit me, in this unfortunate situation, to submit to your consideration a few particulars and observations relating to this horrid charge which has been brought against me.

Although many false, malevolent, and cruel reports have been circulated in the public prints, and throughout the country, ever since my confinement, tending to prejudice the minds of the people in an opinion injurious to my honour, and dangerous to my life. I still have confidence that your justice and humanity cannot be misled by them.

My marriage with Mrs. Donellan, in the year 1777, was with the entire approbation of her friends and guardians; and to convince both her and them of my honourable intentions, I entered into articles for the immediate settling of her whole fortune on herself and children, and deprived myself of the possibility of enjoying even a life estate in case of her death; and this settlement did not extend only to her then fortune, but to all future expectancies.

Ever since my marriage, the deceased and myself lived in perfect friendship and cordiality; and it is well known to the family, and to many respectable persons, that upon several occasions of danger to his life, which the deceased had unguardedly fallen into, I have stepped in and prevented it: Such instances of friendship on my part, are, I trust, sufficient to convince you that I could never entertain any design against his life.

Immediately after the death of Sir Theodosius, I wrote a letter to Sir William Wheeler, one of his guardians, to acquaint him of the melancholy event; and to my letter Sir William Wheeler sent an answer, condoling with the family for the loss. A few days after, I think on the 4th of September, I received a second letter from Sir William, representing the surprize which had arisen in the country respecting Sir Theodosius's death, and his wish to have the body opened for general satisfaction. This letter was brought me by Mr. Powell, and so anxious was I to give that satisfaction, that by him I returned an answer, expressing the cheerful acquiescence of myself and the family, to his propositions; and immediately afterwards sent a servant to Coventry, to Mr. Wilmer and Dr. Rattray, (gentlemen alluded to in Sir William's letter) requesting them to be at Lawford directly, to perform the operation—These gentlemen arrived there about nine o'clock at night, when I produced to them Sir William's letter, and desired they would pursue his instruction. They accordingly, with Mr. Powell, went up stairs, and examined the body; and, after continuing there some time, returned, and informed the family that the same was so putrid, it was not only dangerous to approach it, but impossible at that time to discover the cause of Sir Theodosius's death. I then expressed my wish that Sir William might be acquainted with the result of their attendance, and I think Dr. Rattray promised to wait upon him the next morning for that purpose. But by a letter I received from Sir William soon afterwards, I found Dr. Rattray had not been with him, and therefore immediately sent a letter to Mr. Wilmer, particularly requesting that he and Dr. Rattray would, on receipt thereof, wait upon Sir William Wheeler; to which he wrote me an answer, informing me that he was then engaged in a case of Midwifery, but that as soon as he should be disengaged, he would comply with my request; and further informed me, that Dr. Rattray was then from home, but that if he should return before he, Mr. Wilmer, left Coventry, he would communicate my wishes to him.

Soon after this, a Mr. Bucknill called at Lawford, and said, he had understood that I wished to have the body of Sir Theodosius opened. I informed him that it was my wish, but that Mr. Wilmer, Dr. Rattray, and Mr. Powell, had attended the preceding evening, and declared, that from the high state of putrefaction the body was in, it was not only unsafe to open it, but at that time impossible to form any opinion with respect to the same; however, I told him, that I should nevertheless, think myself obliged to him to undertake the matter, if he would wait upon Sir William Wheler, and obtain his consent to do it.

Mr. Bucknill then left me, and the next morning, being the 6th of September, I received another letter from Sir William Wheler, wherein he mentioned that he had been informed of Mr. Bucknill's having expressed a wish to open the body, and that therefore he had requested Mr. Snow (the apothecary of his family) to call upon him, and take him to Lawford for that purpose; in which letter Sir William also recommended to me, to let them open the body if they should attend.

This day had been fixed upon several days prior to the same for Sir Theodosius's funeral, and the tenants and others invited, were then there ready to attend the same.

About three o'clock that afternoon, Mr. Bucknill arrived alone, and immediately on his arrival I asked him, if the plumber and carpenter (who were then there) should open the coffins, who desired they might wait till Mr. Snow should attend.

Mr. Bucknill waited some time, and then informed me that he must go, but said he would return again, and desired that if Mr. Snow should arrive in the mean time, he might wait. I pressed him to stay, but he said he could not do it,

Soon after Mr. Bucknill was gone, Mr. Snow arrived, and waited a considerable time for Mr. Bucknill's return; but on his not arriving, he at length sent for the plumber and others into the parlour, and after examining them as to the putridity of the body, declared he would not be concerned in opening it for Sir Theodosius's estate; and recommending it to the family to have the same buried that afternoon, immediately left Lawford before Mr. Bucknill's return.

The body was therefore buried that evening, but not by my directions or desire.

This, my Lord, and Gentlemen of the Jury, was the undisguised part I took; but, such is my misfortune, that not only a gentleman, unused to attend this bar, whose persuasive abilities the most conscious innocence must tremble at, has been called in against me—but the most trifling actions and expressions have been handled to my prejudice: My private letters have been broke open, and many other unjustifiable steps have been taken to prejudice the world, and embitter my defence. However, depending upon the conscience of my Judge, and the unprejudiced impartiality of my Jury, I trust my honour will be protected by their verdict.

JUDGE'S CHARGE TO THE JURY.

Gentlemen,

THE prisoner at the bar, John Donellan, stands indicted for the wilful murder of Sir Theodosius Edward Alsley Boughton, which is said to have been effected by poison. Before I state the evidence, I will mention a thing that is taken notice of by the prisoner in his defence, which is, that a great many tales and cruel reports have been circulated in the public prints ever since his confinement, tending to prejudice the minds of the people against him. If such has ever existed, it has been extremely improper, and it has been highly criminal, for there is nothing that tends more to stop the course of justice, than attempting to prejudice mens minds before a cause comes to a be tried. Whether the fact is true or false, what I cannot say, for I really do not know of my own knowledge; but, if it be true, I recommend to you to strip your minds from every thing you have heard respecting this cause before you got into that box, and to consider very coolly and indifferently on the evidence given, before you pronounce one way or the others;

other ; and in the verdict you may find, whatever it may be, you will take nothing in your consideration that has not been proved in the course of the trial. On the part of the prosecution, a great deal of evidence has been laid before you ; it is all circumstantial evidence, and in its nature it must be so, for in cases of this sort, no man is weak enough to commit an act in the presence of other persons, or to suffer them to see what he does at the time, and therefore it can only be made out by circumstances, either before the time of the action, at the time when it was committed, or subsequent to it ; and the presumption which necessarily arise from circumstances is very often more convincing, and more satisfactory, than any other kind of evidence ; because it is not in the reach and compass of human abilities, to invent a train of circumstances which shall so be connected together as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of these circumstances. But if the circumstances are such as, when laid together, will bring conviction home to your minds, that is then more convincing than positive proofs. You will see, whether the circumstances of this cause amount to that conviction that is the matter solely for your consideration. I will state the evidence as I have taken it down. I trust I have not omitted any thing that may be material, though I am conscious I have taken down a great deal that may not be material. If I have omitted any circumstance that may have the least weight, I desire the Counsel on either side will correct me.

Here his lordship summed up the evidence, after which he proceeded as follows :

After so long a trial as this has been, I do not think I should discharge my duty if I rested content with doing nothing more than stating the evidence directly to you. Being a cause of so great a length, and consisting of such a variety of circumstances, I hold it to be a duty which I owe to the public, and which I owe to you, to state to you what are the impressions that that evidence makes on my mind, and to give you my observations ; but at the same time, previously to inform you, that you are not to attend to any opinion, because it is mine ; you are to consider the evidence yourselves, you are to form your own opinion ; if you differ from me on one, or all, or any of the reasons that I give it is your judgment and consideration, and not mine, that must decide this case. Now there are two questions for you to consider the first is, that the deceased died of poison : with regard to that, you heard in evidence, on the part of the prosecution, a great number of very able men in the physical line, who have given you their opinions that they have no doubt but the death was occasioned by poison. The first physician that was called, is Dr. Rattray ; he says, he has no doubt at all but that the medicine was the cause of the death ; and in his opinion, and as the appearances he saw on the body could not arise from putrefaction, he has taken great pains to inform himself of the effects of laurel water ; he has tried various experiments ; he has told you the effects of these experiments ; he has mentioned the circumstance of a biting upon his own tongue, which likewise affected him in all the experiments that he made after ; and from thence, he says, he is satisfied that what he found on the tongue, at the time the body was opened, proceeded in some measure from the laurel water : he says, he never saw any heaving of the stomach attend either epilepsy or apoplexy. Mr. Wilmer says, that though from the appearances of the body, he is not able to form any opinion of the cause of this, yet he is now clearly of opinion, that Sir Theodosius Boughton's death was occasioned by the draft administered by Lady Boughton ; he was asked a great deal about epilepsy, and he says, that heaving is not a circumstance generally attending epilepsies. Another circumstance proper for you to attend to, upon the evidence of these two gentlemen, is, that when they came to Lawford-hall, neither of them were told that there was the smallest suspicion that poison had been administered to Sir Theodosius Boughton ; if there had, they both swear, in the strongest terms, they would have opened the body at all events. Dr. Ashe agrees in opinion with them, that Sir T. Boughton did die in consequence of the draught ; and he says, that he attributes the effects of it from the symptoms that had been spoken of, to nothing but the poison that the appearances on the bodies of animals are similar to the appearances mentioned on this body ; and he says, the appearances on this body were similar to those symptoms which appear where an animal is killed by a vegetable poison. Dr. Parsons agrees in the same opinion, that Sir Theodosius did die of the poison ; and he says, that the smell is the greatest characteristic of the laurel water : he agrees, that the heavings were to be attributed to the effects of the medicine ; his words are, " It must be attributed to the effects of the medicine undoubtedly, and that the laurel water will produce all the effects that have been mentioned." These are the gentlemen of the faculty who

who have given their opinions on the part of the prosecution. For the prisoner, you have had one gentleman called, who is likewise of the faculty, and a very able man, and he can hardly say what his opinion is; he does not seem to form any opinion at all of the matter: he at first said, he could not form an opinion, whether the death was occasioned by the poison or not, because he could conceive it might be ascribed to other causes: I wished very much to have got another answer from Dr. Hunter, if I could; what, upon the whole, was the result of his attention to this case? what his present opinion was? but, he says, he can say nothing decisive: so that on this point, if you are determining on the case upon the evidence of the gentlemen who are skilled in the faculty only, you have a very positive opinion of four of five gentlemen of the faculty on the one side, that the deceased did die of poison; and upon the other side, what I really cannot myself call more than the doubt of another, that is Mr. Hunter; he says, that laurel water will produce the symptoms which are described; he says an epilepsy or apoplexy will produce the same symptoms; but as to an apoplexy, it is not common in its effects on so young and thin a man as Sir Theodosius Boughton was. As to epilepsy, the other witnesses tell you, they did not think the symptoms which had been spoken of, do shew that Sir Theodosius Boughton had any epilepsy at the time. This is the case as it stands, upon the evidence of the medical gentlemen only; but as there was a doubt about that, we must take into consideration all the other circumstances that have either shewn there was poison administered, or that there was not; and every part of the prisoner's conduct is material to be considered in that light. The first evidence that has been spoken of is, that for three or four weeks, or more, before this time, the prisoner had entertained doubts that something or other might happen before Sir Theodosius came of age. This is sworn to by Lady Boughton. On the evening before Sir T. Boughton died, the prisoner comes out into the yard, about seven o'clock, and he addressed Lady Boughton and his wife; he said, he had been to see Sir Theodosius fishing, and he had persuaded him to come in lest he should take cold. Is that truth? You have it sworn by a man who was with Sir Theodosius all the time, that the prisoner was not with him at all; what was there then that called upon the prisoner, unnecessarily, to tell such a story? If you can find an answer to that, that does not impute guilt to the prisoner, and if it be such an answer as you think is a fair and reasonable one, you will adopt it; but on this fact, and many others that I must point out to your attention, I can only say, that unnecessary, strange, and contradictory declarations, cannot be accounted for otherwise than by that fatality which only portends guilt. It is said by Lady Boughton, that the prisoner, when he comes up into the bed-chamber, accosts her in the manner as if he knew nothing what was doing; he asks, what do you want? Why, had he heard nothing about it? He had seen the servant; the servant had told him what Lady Boughton had said, that he was going in a violent hurry for the apothecary Powell; he comes in and says, what do you want? She told him what she had given, and what she thought of the physick, and said if it was given to a dog it would kill him. What was the next step the prisoner took? He asked for the bottle. Is he not apprised, at that time, by Lady Boughton, that she at least suspected; that she thought; for she had said, that if the physic had been given to a dog, it would have killed him. What is the next thing that is done by the prisoner? He asked her which is the bottle; she shews it him; he takes it; as soon as ever he had got it in his hand, he asks, is this it; she says, yes; he immediately pours water into it, and throws it out: can you tell the reason of that? Was there any thing like a reason? It might lead to a discovery if a very small quantity remained in the bottle, but it is prevented by the prisoner; in the moment of doing it, he is found fault with: what does he do then? He takes the second bottle and puts water into it, and rinses it also; he is chid by Lady Boughton; his answer is, that he wanted to put his finger to it to taste it. When Sarah Blundell comes up, he orders her to take away the bottles and the basin; he puts the bottles into her hands; she was going away with them; Lady Boughton stopped her. Why were all these things to be removed? Why was it necessary for the prisoner, when he was advertised by Lady Boughton of the consequences? Why so solicitous for removing every thing that might lead to a discovery? When they come down stairs, Lady Boughton tells you of another conversation on the part of the prisoner, and if you believe that, it shews that what he said about the rinsing the bottles, was not an immediate invention but an after thought: he says to his wife, your mother has been pleased to take notice of my washing the bottles out, and he says, I do not know what I should have done, if I had not thought of saying, that I put the water in it to put my finger on it to taste it; and then she stated it afterwards, as a thought that occurred to him at the time, to say he had done it in order that he might taste it: she swore that he did not taste the first bottle at all. The next thing is, the servant is called; why? the prisoner is anxious to know what

what he remembers about the time of his going out; he fixes his going out to seven in the morning, and then the prisoner answers, Will, you are my evidence. Now something had passed between the time of the prisoner's leaving the room and Lady Boughton's leaving the room, and the time of the servant being called down; and therefore, though this expression was extraordinary, yet I do not think it is one of those leading facts of the case which ought to be much relied upon. If Lady Boughton had entertained suspicions, and had communicated it to him, it was natural enough for him to call on any body who had seen him for the fact he knew; and then he gave this answer, which he might do without conveying any bad meaning in it. But the next day, what is his conduct with regard to the gentlemen of the faculty and the letter he received? First of all, he spoke of it to Lady Boughton; he told her, he had received a letter from Sir William Wheler, desiring the body might be opened, which he answered; he read the answer to her which he sent: after Dr. Rattray had been there, she objected to the answer, but the particular reasons she did not give. Now, see what that answer was; in that letter he tells Sir William Wheler, that he has the great satisfaction of receiving his letter, as it gives him an opportunity of instantly observing his advice in all respects; he then mentions having sent for four persons by name, Dr. Rattray, Dr. Wilmer, who brought with them another person, which made three, and a Mr. Powell, who came to the meeting; so that, according to this letter, four persons were present, and which by the answer he leaves Sir William Wheler to understand, had been a meeting purely in consequence of a letter Sir William Wheler had sent. He says, after receiving your last letter, I gave it them to peruse; that was speaking, as if it had directed the four gentlemen to have proceeded accordingly; and he says, I am happy to inform you they truly satisfied us. Now, what were the facts on the evidence, which warranted these general expressions? Dr. Rattray and Mr. Wilmer had been in the room, they had seen nothing but the face, they had heard no suspicion of poison, they had never seen the first letter that Sir William Wheler had written to the prisoner. He does not say so in this letter, but so couched, it will be for you to consider, whether by this letter he did not mean to mislead Sir William Wheler, and intend it should have that effect which Sir William Wheler swears it had on his mind; that is, that he had understood the body had been inspected, and had been opened by the physicians. The first letter he answers, mentions Sir William Wheler having expressly intimated and spoken of his suspicions from the manner in which Sir Theodosius Boughton got his death, wherein he strongly presses the opening of the body, where he does it not only in the first part of his letter, but he presses it in different parts, telling it about the country, That Sir Theodosius Boughton had been killed by medicine or poison, and therefore writes again, begging it might be opened. This letter the prisoner had, but this letter was not produced. For what purpose was it that this letter was secreted? If it was for the purpose of preventing the body being opened, and their forming a fair and full judgment in which way Sir Theodosius Boughton had got his death, it is then a very strong circumstance in the case; and you observe, that both these witnesses swear, that if they had any intimation of poison, which if they had seen that letter they must have had, they never would have gone away without opening the body; so that the body was not opened at this time by means of that letter being kept back; but yet it is possible, that the prisoner might suppose Sir William Wheler's ideas were sufficiently communicated to the physicians and surgeons by the last letter, and therefore unnecessary to shew the first. If you think that upon the letter, that there is no weight in keeping back the first, and that he did not do it with a view to suppress the suspicions that had been entertained, then this fact ought to have no weight. The next fact spoken to is the prisoner's behaviour about the cloaths; he directed they should be removed; he ordered them to be taken out of the room before any body comes; he takes up the stockings himself, and he says they are wet; was that true? Lady Boughton swore positively that she examined the stockings, that they were not wet at all, and there was no appearance of their having been wet. Another fact proved in evidence is the conversations that the prisoner has held about this unfortunate young man, before the time that his death happened. Mr. Newfam says, he had represented him to him as a person in a very bad state of health, that his blood was a mess of mercury and corruption. Is it truth, that he ever took one grain of mercury in his life? Two witnesses have been called that attended him, Mr. Powell and Mr. Kerr; neither of them say a syllable about any mercury having been given him. He tells a story about a violent swelling of the groin, which they wanted to bring to a head, and for that reason he had attempted and endeavoured to prevail on the deceased to take the medicines; that the disorder was then at the crisis. Was it true? Mr. Powell does not agree in it. He says it was very trifling; hardly any thing. Mr. Kerr does not agree. He says it was very trifling. In this also he is contradicted by

Mr. Powell. Then he told Newsam, the young man's breath was so offensive, they could hardly bear it. Of that there is no evidence. Then, subsequent to the time when Dr. Rattray was there, upon the day after, Sir William Wheler sends a letter, desiring the body might be opened. What is the prisoner's answer? That Dr. Rattray and Mr. Wilmer had declined it, and said that it would not be fair to have it opened, after these gentlemen had declined it. This he said to Mr. Buckhill; after gentlemen so eminent in the profession had declined it, that it would not be fair in him to permit it. What, in a case where suspicion of poison had been mentioned by a mere friend and relation of the family, Sir William Wheler, if a man was to be found that would open the body, was it not a thing to be desired by every body. However, that is refused on the morning after, to Mr. Bucknill. After this, Mr. Snow came to the house: What passed between the prisoner and Snow we have not heard; but, when Mr. Bucknill comes back again, he asks the prisoner, Whether Mr. Snow was gone? The prisoner told him, Yes; he had been there, and had given orders what to do, and that they were proceeding accordingly. What were the orders? Were they any thing more than that the body should be buried? That is what the prisoner says in his defence: But Mr. Snow was not called. You have had no evidence of what passed between the prisoner and Snow. He has told you, in his defence, Mr. Snow advised the immediate burial of the body: That is not proved. If that was all the advice that could be given, why, in such a situation, should the prisoner chuse to content himself with such a general answer to Bucknill, That Snow had given the orders what to do, and they were proceeding accordingly. They then shew you, that the prisoner is a man who, for a long time before this, had been practising with a still. He had a still of his own in the house, which he kept in a room that belonged to himself; it is called his room; and in which it further seems he had been distilling different things: That is a circumstance to be considered: but it is a circumstance which alone, would not deserve much weight, for a man may have such a thing for an honest purpose; and he did make use of it, and sometimes for an honest purpose; for he used it for distilling lavender-water, and in distilling roses: But however, this fact appears, that he had it in his possession long before the time when Sir Theodosius Boughton died; that he produced it himself within two or three days after Sir Theodosius's death; that it was then full of lime, and it was wet: The prisoner then thought it necessary to make an excuse for the state in which it was, and he tells the gardener that he had used the lime to kill fleas. That is the excuse he made about the still. Now it is rather an extraordinary thing, that it should be thought necessary by him at that time to make an excuse about the still, when no question was asked about it. Then, he says, he used the lime to kill the fleas. What other conversation is there between the prisoner and the gardener in the morning of that day? The prisoner came to the gardener, and tells him, You shall work at your ease now; I wanted to be master before, but now I am got master, and I shall be master. Upon the same morning, he goes to the gardener, and tells him that he must get some pigeons; that he must have them at ten o'clock for Sir Theodosius; for, poor man, he is very ill of that nasty disorder: This must have been after he was up in the room, and ordered the pigeons to be killed and got ready by ten in the morning—(Here Mr. Justice Buller was interrupted by Mr. Newnam, who told him that the pigeons were meant to be put to his feet.)—Mr. Justice Buller. I am very glad the Counsel has told me what occurred to him; for, whatever circumstance I mistake, I would wish to be set right in. They suppose the pigeons were meant to be put to his feet, which is a common practice, and a circumstance I dare say, all of you must have heard of; if a man is in extreme pain or danger, they put pigeons to his feet. If that was so, how comes it not to be mentioned? Not a word is mentioned to Lady Boughton about that, or any thing that was like to be a relief to Sir Theodosius, by the prisoner. The next thing is the circumstance of the prisoner's rining out the bottle. The Juryman swore, that the prisoner pulled Lady Boughton by the sleeve before the Coroner, when she mentioned that circumstance. Was that proper, in a case where all possible enquiry should be made? But when this circumstance is mentioned by her before the Coroner, he pulls her by the sleeve. He tells his wife, afterwards, that she had given this evidence unnecessarily; that she was not obliged to answer any question that was not put to her, and that the question about rining the bottles was not asked. Did the prisoner mean that she should suppress the truth? Did he mean that she should endeavour to avoid the discovery as much as she could, by barely suppressing a circumstance in which there was truth? If he were innocent, how could the truth affect him? But, at that time, the circumstance of rining the bottle appeared even to him to be so decisive, that he stopped her in the instant. He blamed her afterwards for having done it. Gentlemen, these are very strong facts, to shew what was passing in the prisoner's own mind,

mind, and to shew what he was conscious of at that time. Besides the evidence which was given by one of the witnesses, of the conversation that he has held with him since he has been in gaol, you are told, for a long time together, beginning in the month after he got into the gaol, he was continually talking about this affair: at that time, he made no doubt but that Sir Theodosius Boughton had been poisoned. He stated it as a matter that admitted of no doubt. In the short time that passed afterwards, that tale had not been altered. These are the material circumstances against him.

For himself, he says, (and which he would have you believe from the letters) he has always been ready to give the utmost satisfaction in this enquiry; that he wished to have the body opened; that he expressed himself so to different witnesses; that he wrote to Sir William Wheler, and begged that Sir William Wheler would give him advice. Several of the expressions that are made use of, respect the satisfaction which he received from Sir William Wheler's advice. Sir William Wheler's letter mentioned, that he wanted a young man, Mr. Bucknill, to examine it, and it was his wish to have the body opened. But the question for you to consider is Whether, on the whole of his conduct, he did endeavour to have the body opened; for if, on the whole, he did not do his endeavour to get the body opened, but has frequently attempted to prevent it that will be much stronger than saying either two, or even twenty times, he wished to do it. You will judge from the evidence; and therefore it is for you to say, Whether you think, on the whole of his conduct, you are or not satisfied that what he says, in one or two of his letters, or what he said to the young man, the surgeon, was his real intention and meaning. You are to judge from, the whole of his conduct, whether he did wish and endeavour to have every explanation given, and to have the body opened, or whether it was only used to throw a greater blind on the case, and that he endeavoured, by every artifice to prevent it. If he did prevent it, it will be for you to enquire, with what view that could be done? Could it be done with any view but to secrete the truth? If therefore you are satisfied, on the whole, that the deceased was poisoned, the next question is, by whom that poison was prepared? You have been truly told by the Counsel, on the part of the prosecution, that it is perfectly immaterial what was the kind of poison used: The Indictment states arsenic. It is not necessary, in point of law, they should prove any arsenic at all was administered to the deceased. But if you are satisfied that he was destroyed by poison, and that the prisoner had a hand in mixing up that poison, and put it in the place of medicine for the purpose of its being to given Sir Theodosius Boughton, and it afterwards was given to him, and was the cause of his death, that is full evidence of the offence which is charged against him. Now, with regard to his being the person, it must depend on the evidence that has been stated before, which is produced against him; every circumstance that I have been speaking of is a degree of proof. And that circumstance to which I can find no answer whatever is given; that is, rinsing out the bottle; carries very strong marks of the knowledge in himself, there was something in it which ought never to be discovered. The answer he gives to that is, he was not to gain any thing by Sir Theodosius's death; that his affairs was so settled, and so arranged, upon his marriage, that he never was to get any thing by Sir Theodosius's death; and therefore, it was no motive to commit such a crime. Besides that, he had, in repeated instances, interposed to save this young man from scrapes he had into. In one instance it is true, in the other it is very slight; because it is said, he came there: And so far you must take it for the credit of the prisoner, he did go for the purpose of mediating and preventing mischief: But the evidence says, there was no occasion; for the witness said he understood it was settled before the prisoner came. But so far it is material, as the witness understood he went from the seat where Lady Boughton lived, in order to meet Sir Theodosius, and to prevent any mischief that might ensue. Another fact of that sort was proved by lady Boughton, at Bath. She understood he interfered, and put an end to a dispute which Sir Theodosius had with some other person. Now these are facts not to be forgotten. You are to take them into your consideration, and give them all the weight you think in justice they deserve; but you will observe, these quarrels are at a distance. One is two years back, in 1779. In the year 1778, he prevents the mischief that might arise in consequence of quarrels between the deceased Sir Theodosius and other persons. That is a different period of time from that which we are talking of; but that is for your judgement. You hear, on the other hand, he represented this young man in a dangerous state of health, and not likely to live long; and the representation is at a time which is very recent, and a short time before the death of Sir Theodosius. The clergyman speaks of a transaction two or three days before his death. He speaks of conversations. Conversations are strong

strong things. On the whole of the evidence, you will say, whether you think they were true or not. If they were not, then they prove nothing as to this case. But you must take the whole of the circumstances into your consideration: It is for you to decide on this case; in doing which you are to act according to the best of your judgment and your conscience, to find out the truth of the case; and as you find that truth, so you will pronounce your verdict.

The Jury retired for a few minutes; and, when they returned, brought in the prisoner, **GUILTY.**

T H E S E N T E N C E.

JOHN DONELLAN, the offence of which you now stand convicted, next to those which immediately affect the state, the government, and the constitution of this country, is of the blackest dye that any man can commit. For of all felonies murder is the most horrible, and of all murders, poison is the most detestable. Poisoning is a secret act, against which there are no means of preserving or defending a man's life; and so far as there can be different degrees in crimes of the same nature, yours surpasses all that has ever gone before it. The manner and the place in which this dark deed was transacted, and the person upon whom it was committed, must enhance your guilt. It was committed under the mask of friendship, and by the greatest imposition, on an unfortunate mother, and a still more unfortunate unsuspecting young man. It was committed in a place where suspicion, at the instant, must have slept; where you had access, as a bosom-friend and brother, where you saw the rising representative of an ancient family preside in affluence, but where your ambition proudly, but falsely, taught you to imagine that you might live in splendour and happiness, if he whom you thought your only obstacle were removed. Probably the greatness of his fortune caused the greatness of your offence. And I am fully satisfied on the evidence given against you, that avarice was your motive, and hypocrisy served you with the means. That the deed was done by you, which not only hastened him, but which very soon removed him to an untimely grave, has been fully proved to the satisfaction of myself and the jury; and I think it impossible to find a person of the meanest capacity amongst the numerous audience who stand around you, that can doubt about your guilt. In most cases of murder, it has pleased heaven, by some mark or other, to point out the guilty person; and all the care and foresight of the most cunning and the coolest offender, is not able to guard against some token, some circumstance which has left the door open to a discovery, that they imagined they had perfectly barred up all access to. In your case the facts of the accounts which have been given by yourself, the misrepresentations which you have held out to Sir William Wheler, the endeavours that you have used to prevent a full enquiry to discover the truth of the case, the strange conversations which you have held at different times, and that circumstance of rining out the bottle, leave your case without the smallest doubt. In such a case as yours, supported by such cogent proofs as have been adduced against you, you can receive nothing from the tribunal before which you now stand but strict and equal justice; but you will soon appear before an Almighty Judge, whose unfathomable wisdom is able, by means incomprehensible to our narrow capacities, to reconcile justice with mercy. Your education must have informed you, and you will do well to remember, that such beneficence is only to be obtained by deep contrition, by sound, unfeigned, and substantial repentance. May it please that great and awful Being, during the short time that is allotted for your existence in this world, to work that repentance, and that contrition in your mind, which will prepare you for his everlasting mercy. But the punishment which the public has a right to demand, and which I must inflict on you, is speedy and ignominious death. And the sentence therefore which I pronounce on you is, That you be taken from hence to the place from whence you came; and from thence, on Monday next, you be carried to the place of execution, there to be hanged by the neck until you are dead, and that your body be, afterwards, delivered to the surgeons, to be dissected and anatomized: And may God Almighty have mercy on your soul!





